

NIMROD FARROW AND RICHARD HARRIS.

REPORT

OF

THE SECOND COMPTROLLER, THE CHIEF OF ENGINEERS, AND THE THIRD  
AUDITOR,

ON

*The claims of Nimrod Farrow and Richard Harris.*

JANUARY 6, 1835.—Referred to the Committee of Claims.

JANUARY 12, 1835.—Ordered to be printed.

TREASURY DEPARTMENT,

*Third Auditor's Office, January 5, 1835.*

SIR : We have the honor of transmitting herewith, in pursuance of the direction contained in the act for the relief of the legal representatives of Nimrod Farrow and of Richard Harris, passed July 14, 1832, reports of the examinations made by us of the claims therein referred to, viz.

One, marked A, made by the Second Comptroller and General Gratiot, jointly, and the other, marked B, made by the Third Auditor alone.

We also send the testimony taken by us, and other papers in relation to the subject.

With great respect,

PETER HAGNER, *Third Auditor.*

J. B. THORNTON, *Second Comptroller.*

C. GRATIOT, *Chief Engineer.*

To the Hon. JOHN BELL,

*Speaker of the House of Representatives.*

A.

*Case of Farrow and Harris.*

The undersigned, two of the commissioners to whom the claim of the legal representatives of Richard Harris and Nimrod Farrow, against the United States, arising from a contract to construct a fortification at Dauphin island, was referred for examination by act of Congress, approved the 14th of July, 1832, have had the matter under careful consideration, and have the honor to submit the following remarks illustrative of their views of the case :

[Gales & Seaton, print.]

The contract in question specifies "that the said Harris will, for the consideration hereinafter stated, well and truly construct, or cause to be constructed, at such place on Dauphin island, Mobile bay, as the United States engineer may direct, *a fort, to be constituted of such walls, ditches, embankments, buildings, parts and dimensions, as said engineer may, from time to time, prescribe.*" The contract further provides "that the construction of said fort shall be commenced on or before the first day of December, 1818," and "completed on or before the first day of December, 1821." It is also understood that the walls of masonry shall be estimated in measurement by their actual length, breadth, and thickness, and that the contractor shall receive from the United States—

For every cubic yard of earth excavated and removed	-	-	\$ .838
For every cubic yard of brick masonry	-	-	11.000
For every running yard of carpentry, where scantling and joists may be used, not exceeding in measure 10 × 10 inches in width and thickness,	-	-	.625
For every running yard of carpentry, where joists of dimensions smaller than 6 × 8 inches in breadth and thickness may be used,	-	-	.440
For every square yard of flooring, 2 inch stuff,	-	-	.250
“ “ 3 inch do.	-	-	3.500
“ “ of double doors,	-	-	5.500
For every square yard of windows, including frames, shutters, sash, and glazing,	-	-	5.500
For every square yard of bunks and ceiling,	-	-	1.250
For every running yard of wainscotting,	-	-	.375
For every pound of iron work,	-	-	.250

And in the last clause of the contract, as an additional inducement to the contractor to bind himself to build a fort according to any plan that might be presented by the engineer, the discretion of the Government, as to the magnitude of the work, is limited in the descending scale by providing "*that at least thirty thousand cubical yards of masonry will be constructed, and at least one hundred thousand cubical yards of earth will be excavated and removed in constructing the fort aforesaid.*"

The plan of the fort upon which that contract was predicated, was that presented by General Bernard, dated at New Orleans, the 23d of December, 1817, and adopted by the Government, and which provided for the following items, estimated to cost, according to the analysis of prices at that time in the possession of the Engineer Department, the sum set opposite each, respectively, viz.

117,325.1698 c. yds. of excav'n & embankment,	at \$1.298	152,288.070
29,999.4560 " masonry,	- 10.668	320,034.197
3,642.6260 " arches,	- 12.990	47,317.712
336.2400 sq. yds. masonry, 2 bricks,	- 6.779	2,279.371
6,959.5400 " " 1 brick,	- 3.260	22,688.100
2,488. run'g yds. 10 × 10 timber work,	- 2.135	5,301.880
76. " 8 × 8 " "	- 1.290	98.040
127.9200 " 6 × 8 " "	- .997	127.536
4,781. " 6 × 6 " "	- .540	2,581.740
2,488. " 4 × 8 " "	- .660	1,642.080
1,050. sq. yds. flooring, 2 inches,	- 5.691	5,975.550
1,123.2600 " " 3 " "	- 6.767	7,601.100
39.1621 " doors,	- 7.018	274.138



113.7040 sq. yds.	windows,	-	-	\$6.489	737.598
17.7822 "	gates,	-	-	7.018	124.795
2,417.9600 "	wainscotting,	-	-	2.3935	5,782.000
75.8000 "	glass work,	-	-	3.000	227.400
2.	locks,	-	-	25.000	50.000
11.	do.	-	-	12.000	132.000
1,620. sq. yds.	flat roofing,	-	-	3.800	6,156.000
400. yards	tin gutters, hooks, &c.	-	-	1.500	600.000
1,620. sq. yds.	roof wainscotting,	-	-	1.500	2,430.000
2,471.6435 "	painting,	-	-	.375	926.866
2.	furnaces for heating shot,	-	-	468.000	936.000
	drawbridge and gates,	-	-	-	300.000

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\$586,612.773

But, by virtue of the discretion with which the contract invested the Government, to prescribe any work requiring for its construction a greater quantity of masonry than 30,000, and a greater amount of excavation than 100,000 cubical yards, it appears, from an official communication addressed by the Chief Engineer to the honorable the Secretary of War, and by the latter to the chairman of the Committee of Claims in the House of Representatives, under date of the 24th of February, 1827, (see Doc. 21, 2d session 20th Congress,) that the plan of the work, above referred to, was enlarged to an extent set forth in that communication, was adopted as that of the work to be erected on Dauphin island, and prescribed to Harris for his government when his operations commenced: (for a corroboration of the evidence of enlargement, see Colonel Gadsden's answer to the twelfth question, in his letter of the 24th of September, 1833.) At this stage of the transaction, the general terms of the contract assumed a new limitation, with regard to the minimum quantity of work, and all option on the part of the Government, under the contract, to change the plan so as to involve a less amount, ceased; for it is conceived that, from the time Harris was notified of the adoption of this plan, the contract, together with the evidence of the plan, having been prescribed to him, he completed his engagement to construct the work defined by that plan, and no other, requiring less work for its execution.

It is not deemed necessary to notice here the circumstances which gave rise to much detention and consequent loss, on the part of the contractor, before the work could be commenced, after he had completed his preparations for that purpose, nor to notice the causes which produced a failure on the part of the Government to comply with the terms of the contract, and which led to its subsequent abandonment, as these are all stated at length in Doc. 69, House of Representatives, 2d session, 18th Congress. All that is considered essential to our present object is to ascertain—

1st. The quantity of work provided by the contract, according to the construction just given to it.

2d. The quantity of work actually executed at the time the contract was abandoned by the Government; and

3d. The probable cost, and consequent profit, under a judicious management, to the contractor, of completing the remainder of the work, had he been permitted to finish it; as it is believed the Government is justly

chargeable with the amount of work actually performed, estimated at the contract price, and the profit which the contractor would have realized on the remainder of the work, being the difference between the contract price and the price at which the remainder could have been executed.

*1st. The quantity of work provided by the contract.*

According to the official statement of the Chief Engineer, just referred to, the altered and enlarged plan would require for its execution, of

Excavation,	-	-	-	-	66,486.84 c. yards.
Embankment,	-	-	-	-	225,534.05 c. yards.*

The embankment, according to this plan, being much greater than the excavation, the amount of embankment will be taken as the excavation and embankment, according to the meaning of the contract.

The original estimate of General Bernard gives, as the number of cubical yards of masonry, for

Scarp of 5 curtains, 5 bastions, counterscarp of 5 fronts, interior walls of revetment of 5 fronts, and front walls of barracks,	-	-	-	29,999.4560
For arches,	-	-	-	3,642.6260
Partition walls of barracks, 2 bricks thick, sq. yds. $336.2400 \times .25$ ,	-	-	-	84.6600
Revetment of interior slopes of body of plan, covertway, platforms of sea fronts, traverses, and caponiers, of 1 brick thick, sq. yds. $6,959.5400 \times .125$ ,	-	-	-	869.9425

Cubical yards,	-	-	-	34,596.0845
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The number of bricks required, according to the statement of the Chief Engineer, above referred to, for this amount of masonry, is 15,997,539.00

The additional number necessary to execute the altered plan, - - - - 1,755,900.00

This gives 462.4 bricks to the cubic yard of masonry, and, therefore, 1,755,900.00 will give, - - - 3,797.3610

Making the amount of masonry, c. yds.	-	<u>†38,393.4455</u>
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As sufficient data cannot be obtained, upon which to estimate the additional quantity of wood, and other work, exclusive of masonry, and excavation and embankment, required for the enlarged fort; and as the analysis in our possession will not enable us to determine the prices at which the various kinds of this work could have been executed at Dauphin island, we have assumed the award of the commissioner, Mr. Swan, (see Doc. 69, House of Representatives, 2d session 18th Congress,) as covering all claim that the contractor may advance on this account.

*2d. The quantity of work executed at the time the contract was suspended.*

From statements on the books of the Third Auditor of the Treasury, (see Doc. 21, 2d session 20th Congress,) it appears that there were actually constructed at that time, of

\* See note 1.

† See note 2.

Masonry, - - - - -	1,446 $\frac{1}{2}$ c. yards.
Earth excavated, - - - - -	7,250 "
Carpentry amounting to - - - - -	\$661 95

3d. *The cost of construction, under a judicious management, of executing 218,284.05 cubical yards of excavation and embankment, and 36,946.9455 cubical yards of masonry, being the difference of the total work provided by the contract, carpentry and other work excepted, and that actually performed at the time of suspending its execution.*

1st. Analysis of labor, according to Clark's evidence, (see Doc. 69, page 35.)

200 slaves, at \$600.

The interest on their value, for one year, - - -	\$7,200 00
Finding, - - - - -	10,400 00
Medical attendance, - - - - -	1,500 00
Insurance against loss, at 5 per cent. - - -	6,000 00
4 white overseers, at 750 dollars, - - -	3,000 00
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	\$28,100 00

Cost of one slave will therefore be, per annum, - - - \$140 50  
Deducting 115 days' lost time for Sundays, bad weather, and sickness, the working days in the year will be reduced to 250, and hence the cost of daily labor will be - - - - - \$0.562 00

This allowance, for loss time, is certainly very great, and, no doubt, would exceed the truth, could proper information be procured on the subject.

For the masonry, same evidence.

1 master workman, per year, - - - - -	\$2,000 00
6 superior masons, per year, 750 dollars, - - -	4,500 00
21 laborers, as per Fisher's testimony, pp. 74 and 75, at .562	2,950 50
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	\$9,450 50

Giving an average yearly cost of 1 mason  $\frac{9,450\ 50}{12}$ , allowing 6 of the laborers to work as followers to the 6 leading masons - \$787.541

And the daily cost, supposing 250 working days to the year, \$3.150

Agreeably to the evidence of Capt. Delafield and Lieutenant Ogden, the former of whom has been engaged for a length of time on works in the Gulf of Mexico generally, and the latter having constructed the work on Mobile point, in the immediate vicinity of Dauphin island, 8 men will remove and put in place 15 cubic yards of earth per day: hence

$8\text{ men} \times 0.562$  - - - - - \$0.2997

Add cost of tools, plank, barrows, &c. 5 cents per cubic yard, - 0.0500

\$0.3497

## 2d. Masonry.—Materials.

*Cost of Brick.*

1 moulder,	}	Will make, per day, 2,333 bricks.			
1 temperer,		Deduct for wastage,			
1 wheeler,		from various causes, 333* “			
2 off-bearers,					
5 persons, per day, at .562		Leaves 2,000 “	the product of		\$2.810
Cost, therefore, of 1,000 brick will be		- - -			\$1.405
Setting in kiln and burning,		- - -			.207
Half cord of wood, at \$2, (see Fisher's testimony, Doc. 69, p. 69,)		- - -			1.000
Tools and lumber,		- - -			.125
					<hr/>
Cost at the kiln,		- - -			2.737
Cost of transportation to Dauphin island, G. Russel's testimony, (see Doc. 69, p. 69,)		- - -			2.500
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Total cost of brick per 1,000, at Dauphin island,		- - -			<u>\$5.237</u>

*Cost of Mortar.—Lime.*

By analysis, it is ascertained that 1 cubical yard of masonry will require 462.4 bricks, and 3.81 bushels of mortar; but, owing to the extreme meagreness of lime prepared from shells in the ordinary way, a great proportion of this article will be assumed as entering into the composition of the mortar, say 2 bushels for 3.81 bushels of mortar; more than one-half. On examination of all the testimony in reference to the price of lime, and taking into account all the attendant circumstances in manufacturing it at Dauphin island, Colonel Gadsden's maximum has been adopted as that nearest the truth, which is 12½ cents per bushel, and is believed to be very high. One thousand bricks will require 4.32 bushels of lime. With regard to sand and water, the testimony of Colonel Gadsden, Major De Russey, and Fisher, all state they were under foot, and therefore their cost is nothing.

By analysis, 11.25 cubic yards of mortar require 12 days of work,	- - -	\$6.74
And add wear and tear of tools,	- - -	.12

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\$6.86

Hence the manipulation of mortar for 1,000 bricks will be	\$0.233
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Then:

4.32 bushels of lime, at 12½ cents,	- - -	0.5400
Sand and water,	- - -	0.0000
Manipulation,	- - -	0.2336

Cost of mortar for 1,000 bricks,	-	<u>\$0.7736</u>
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\* See note 3.

*Cost of scaffolding\* and tools* (see p. 88, analysis of prices by the Board of Engineers) for 1 cubic yard of masonry,  $12\frac{1}{2}$ -100, and for 1,000 bricks, supposing 462.4 to the cubic yard, - - - - - \$0.2595

On reference to the last monthly report of the engineer who constructed Fort Jackson, on the Mississippi, a work in every respect similar to that at Dauphin island, it is found that 17,788.411 bricks were laid in 14,850.50 (mason's) days' work, giving a daily average of 1,198 for one day's work. But, as before determined, one mason, including the cost of his overseers, tenders, &c., will cost \$3.15 per day: hence, laying 1,000 bricks will cost, - - - \$2.629

#### *Recapitulation of Masonry.*

Cost of 1,000 bricks,	-	-	-	-	-	5.2370
Mortar for laying the same,	-	-	-	-	-	0.7736
Scaffolding and tools,	-	-	-	-	-	0.2595
Laying the same,	-	-	-	-	-	<u>2.6294</u>

Expense of masonry composed of 1,000 bricks, - - - \$8.8995

Cost of 1 cubical yard of masonry, consisting of 462.4 bricks, is - - - - - \$4.1151

#### 3d. Profits to the contractor on what remained to be executed.

1st. Contract price of earth, excavation, and embankment, per cubic yard,	-	-	-	-	-	\$0.8380
By analysis,	-	-	-	-	-	<u>0.3497</u>

Profit on 1 cubic yard, - - - - - \$0.4883

2d. Contract price per 1 cubic yard of masonry,	-	\$11.0000
By analysis,	-	<u>4.1151</u>

Profit on 1 cubic yard, - - - - - \$6.8849

The account under the contract will, therefore, be amount of work actually done under the contract,  
 7,250 cubical yards of earth,  
 1,446.50 cubical yards of masonry,  
 Carpentry, to the amount of \$661 95. (See Doc. 21, 2d session 20th Congress.)

Amount of excavation and embankment remaining to be done,  $225,534.05 - 7,250 = 218,284.05$ .

Amount of masonry remaining to be executed,  $38,393.4455 - 1,446.50 = 36,946.9455$

Profits on wood and other work, not included in the above, as per award of Mr. Swan, - - - - - \$8,000 00

For damages on account of detention at the commencement of the work. Mr. Swan's award is also assumed, (see Doc. 69, 2d sess. 18th Congress, House of Representatives,) - \$4,000 00



Before stating the account of the contractor with the United States, it is proper to remark, in support of the results above given, that abundant evidence is to be found in the documents of Congress on this subject (see Doc. 69, 2d session 18th Congress) to show that ample preparations were made for the vigorous prosecution of his contract, when it was suspended in its execution. His brick yards were prepared and in efficient operation; means were provided for converting the beds of shells in the immediate vicinity into lime; sand of the best quality, and in any abundance, under his feet; water to be found by sinking a few feet below the natural surface of the site itself; materials and stores of every necessary description collected; all the physical force his own property, with the means to extend the number of his working hands (at that time two hundred, exclusive of overseers, masons, and carpenters) to the number of a thousand; so that, after the most careful analysis, it is believed that, by giving due weight to all the considerations bearing upon the subject, it will be found that the estimated cost, above given, of the various items of expense is rather over than under the cost which would have resulted to the contractor had he been permitted to complete the contract.

It has been urged that, from the number of hands in the service of the contractor, compared with the number of bricks which they could have manufactured in one year, it could not have been within the power of the contractor to complete the work within the time prescribed by the contract. Although this objection would seem to be in anticipation of an event which did not actually happen, and which the means in the possession of the contractor appeared to give sufficient assurance would not occur, yet, even on the supposition that the contractor would not have complied with his part of the contract, in this particular, he might with justice have asked for an extension of time, on the ground that he had been prevented from commencing the work at as early a day as he was prepared to do so, in consequence of the delay on the part of the Government in designating its precise location and plan. This objection has been disregarded in the foregoing analysis, not, however, so much on the ground of detention, as above specified, as from the consideration that the analysis was commenced with a determination to exclude every matter not immediately connected with the actual occurrences under the contract from its date till its abandonment on the part of the Government.

*The United States, to the contractor, Dr.*

For 7,250 cubic yards of earth, at	.838, -	-	\$6,075.0000
1,446.5 do masonry,	11.000, -	-	15,911.5000
carpentry,	-	-	661.9500
218,284.05 cubic yards of earth,	.4883, -	-	106,588.1016
36,946.9455 do masonry,	6.8849, -	-	254,376.0250
Award on wood and other work,	-	-	8,000.0000
Damages for detention,	-	-	4,000.0000

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\$395,613.0766

By reference to the official statement of the Third Auditor of the Treasury, under date of the 22d of January instant, herewith, it will be perceived that the contract stands charged with the following sums, viz.

By warrants,	-	-	-	-	\$95,000 00
Capt. Gadsden,	-	-	-	-	58,565 87
N. Coxe,	-	-	-	-	8,685 50
Requisitions,	-	-	-	-	68,947 78

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231,199 15

To which is to be added, as derived from

N. Coxe,	-	-	-	-	26,250 00
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Making a total debit of - \$257,449 15

The building materials of various kinds, delivered at the site, (see Doc. 21, 20th Congress, 2d sess.) are not noticed in the foregoing statement, for the reason that, if the contractor had been permitted to complete his contract, they would have been merged in the general account of profit and loss; and because their sale to the Government was not a transaction necessarily involved by the contract, but one of ordinary purchase, amounting to \$31,252 94. This sum being cancelled by the materials turned over to the Government, (see Doc. above referred to,) must be deducted from the amount received, to determine the actual receipts of the contractor, under the contract,

The debit, also, of the 3d June, 1828, (see statement of the Third Auditor,) is the amount of an award of the Secretary of War, understood to be for detention and loss of slaves, and should, in like manner, be deducted, being a transaction not dependent on the contract,

\$10,200 00

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41,452 94

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215,996.2100

Balance due on the contract,

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\$179,616.8666

All which is respectfully submitted.

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WASHINGTON, January 5, 1835.

Since the date of the foregoing statement, a report from Lieut. Ogden, of the corps of engineers, made on the 1st of November, 1821, has come under our notice, a copy of which is hereunto appended.

From this, we find that the quantity of materials deposited and work executed under the contract at Dauphin island, and for which the contractors appear to have received a credit on the books of the Treasury, is not

correctly stated in the document we had accepted as evidence in the case. The report bears on its face the impress of official truth, and is, for that reason, now substituted for the one adverted to above. By this it is shown that the materials on hand, and not worked up, as also the quantity of work executed, in conformity to the stipulations of the contract, at the time it was arrested by the General Government for the want of funds, supposed to have been on or about the date of the report, differ materially as regards quantities, which renders it necessary to *restate* the account, in order to present in a clear view the result to which the undersigned have arrived in making their award, viz.

*The United States, to the contractor, Dr.*

For 10,921 c. yds. of earth removed, at .838 cts.	9,153 79	
1,920.5 c. yds. of masonry, at \$11	- 21,125 50	
Smithery, - - -	- 338 97	
	<hr/>	30,618 26

According to the results previously obtained, leaving to be executed to complete the contract—	
Of embankment, 214,613.05 c. yds. at .4883 cts.	104,795 55
Of masonry, 36,472.9455 c. yds. \$6.8849,	251,112 58
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	\$355,908 13

But as it is usual, in forming an estimate, to add ten per cent. for contingencies, which cannot be foreseen, it is deemed equally fair in this case to charge the contract with the loss of probable casualties in the onward course of its execution, and which was by inadvertence omitted in the statement previously made. It is believed that these casualties would not have exceeded the same per centage, which, being deducted from the above,

35,590 81

Leaves for profit to the contractor, - - -	320,317 32
And making the whole credits - - -	350,935 58

Adding to this the value of the property unused at the time the work was abandoned, and for which the contractors are conceived to be justly entitled to a separate credit, - - -

15,336 40

Award previously made on wood and other work, - - -

8,000 00

Damages for detention, - - -

4,000 00

Award of the Secretary of War, - - -

10,200 00

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37,536 40

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388,471 98

Deduct the amount previously debited to their account, as per statement before cited, - - -

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257,449 15

Leaving this amount, deemed to be due by the United States, on principles of equity and justice, to Farrow and Harris, - - - -

\$131,022 83

All which is respectfully submitted.

J. B. THORNTON, *2d Comptroller.*

C. GRATIOT, *Chief Engineer.*

*Note 1.*—The great augmentation in the embankment was caused by the change made from the plane, in reference to the natural surface of the country, assumed by the Board of Engineers, to that on which it was concluded to build the work. By the former, the ditches being deep, would have furnished most of the earth required for the rampart and glacis, which in this case would have been low, and required less for their construction. But the change in the plane of reference being adopted, the height of both became greater, and required the number of cubic yards of earth stated. The same cause also operates to increase the quantity of masonry to have been built.

*Note 2.*—The statement of the Chief Engineer is accepted on account of its supposed official correctness. It shows that 17,753,439 bricks were to enter in the construction of the fort, which makes 38,394.45 cubic yards of masonry. The latter quantity taken as the division, will give 462.4 as the number of bricks contained in each cubic yard of masonry.

*Note 3.*—One-seventh of the bricks moulded is assumed for losses in the process of manufacture and transportation. As regards *breakage*, the experience of one of the undersigned has led him to believe that, with sufficient care, the loss from this cause is imaginary; for, in the course of construction, *bats* are consumed in a variety of ways, and no *positive* loss occurs, but in the fragments and *clippings* resulting from making closures in the wall and arching.

*Note 4.*—As the analysis here adverted to is based on hired labor, the cost is necessarily greater than it would have been had the wages of the laborer employed in procuring and preparing the stuff not been merged in it; but as in this case the labor belonged to the contract, it is believed that, by assuming this rate, the cost of both scaffolding and centering would be met. For this reason, we have deemed it unnecessary to enter into an elaborate analysis to determine what the absolute cost of each would probably have been under the circumstances involved in the onward prosecution of the contract. As regards the number of centres required for the work under consideration, it is known to one of the undersigned, that all the arches to be turned might have been so regulated as to have had but one common radius. In that event, but three centres were required for the whole number of arches. This method has been adopted at some of the forts recently finished, and at others now under construction, and is found not only very cheap, but highly convenient to the builder.

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TREASURY DEPARTMENT,

*Third Auditor's Office, January 22, 1834.*

SIR: In reply to your letter of the 21st instant, requesting to be furnished with a statement of the moneys actually paid from the Treasury

on account of the contract of R. Harris, for constructing a fort on Dauphin island, I have to state that payments appear to have been made as follows, viz.

By warrant	No. 2466, August 14, 1818,	\$30,000	
" "	" 2780, Oct. 24, "	15,000	
" "	" 4324, Aug. 3, 1819,	25,000	
" "	" 4846, Dec. 3, "	25,000	
			<hr/> \$95,000
By Capt. Gadsden,	1st, 2d, 3d, and 4th qrs. 1819,	24,914 56	
" "	" 2d quarter 1820,	- 2,296 07	
" "	" 3d and 4th quarters 1820,	11,245 83	
" "	" 1st quarter 1821,	- 15,314 72	
" "	" April, "	- 4,794 69	
			<hr/> 58,565 87
By Nath. Coxe,	13th July, 1819,	-	8,685 50
By requisition	No. 3303, 21st April, 1825,	\$58,747 78	
" "	" 1504, 3d June, 1828,	10,200 00	
			<hr/> 68,947 78
			<hr/> <u>\$231,199 15</u>

The aforesaid sum of \$58,747 78 is part of \$73,747 78, directed by the act for the relief of Farrow and Harris, passed 3d March, 1825, to be paid to Nimrod Farrow, the \$15,000 residue thereof having been, agreeably to a letter of the Secretary of War, dated April 20, 1825, retained in the Treasury, and passed to the credit of Nath. Coxe, late agent of fortifications at New Orleans, who appeared by his accounts to have paid notes given by Mr. Farrow for the cost of slaves purchased there for the works on Dauphin island, amounting to \$26,250. The residue of this sum has been since passed to the credit of Mr. Coxe, and the whole of it, therefore, will have to be added to the foregoing aggregate of \$231,199 15. The payment of \$10,200 was made under the act before referred to, and a decision of the acting Secretary of War, dated June 2, 1828.

Very respectfully,

Your most obedient servant,

PETER HAGNER, *Auditor.*

Gen. C. GRATIOT,

*Engineer Department.*



*REPORT of the disposition made of the materials delivered and workmanship executed at Dauphin island, Alabama, the particulars of which are not stated in the monthly reports.*

Materials.	Received.			Used by Engineer Department.		
	Quantity.	Cost.	Remarks.	Quantity.	Cost.	Remarks.
Bricks - - -	2,427,587	\$26,044 51	From 109 to 63 cubic inches contents - -	1,500	\$25 12½	Building and repairing chimneys.
Lime, casks of - - -	36	144 00				
Boards, feet of - - -	166,241	3,657 00	For centreeing. -	{ 19,000 27,112	418 00 596 45	Sundry public purposes at Mobile point and Dauphin island barrack foundation.
Nails, pounds of - - -	1,058	93 58	Wrought and cut. -	{ 50 130	4 00 11 05	Soldiers' hut, boat-house, &c., barrack foundation.
Iron, do. - - -	1,762	105 72				
Oil, gallons of - - -	32	40 00	- - -	10	12 50	Priming window frames, sashes, &c., painting boat.
White lead, kegs - - -	3	27 00	- - -	3	27 00	As above.
Lampblack and spirits turpentine - - -	-	12 00	- - -	-	9 00	Do.
Paint brushes - - -	6	4 00	Assorted - - -	6	4 00	Do.
Boat, four-oared - - -	1	80 00				
Oars - - -	8	6 68				
Cordage - - -	-	25 65	- - -	-	15 65	Boats, &c.
Duck and twine - - -	-	18 00	- - -	-	18 00	Boat sails.
Sole leather - - -	-	6 20	- - -	-	6 20	Oars.

[ Doc. No. 78. ]

# REPORT—Continued.

14

Materials.	Used by the contractor.			Casualties.			On hand.		
	Quantity.	Cost.	Remarks.	Quantity.	Cost.	Remarks.	Quantity.	Cost.	Remarks.
Bricks	902,700	\$11,587 35	For the construction of barracks	40,000	\$400 00	Gale of 16th September, 1821	1,484,887	\$14,045 15½	1-4th broken, (estimate.)
Lime, casks of	36	144 00	For private purposes.						
Boards, feet of	64,488	1,418 72	Windows, doors, fixtures, buildings, &c. and private	25,045	550 98	Exposure	55,641	1,223 81	Decaying.
Nails, pounds of	878	78 53	Doors, windows, &c. 726 lbs. unknown.						
Iron, do.	1,463	87 78	In the barracks				229	17 94	
Oil, gallons of	-	-	-				22	27 50	
White lead, kegs	-	-	-						
Lampblack & spirits of turpentine	-	-	-					3 00	
Paint brushes	-	-	-				6	4 00	Half worn.
Boat, four-oared	-	-	-	1	80 00	Gale of 16th September, 1821.			
Oars	-	-	-	2	1 67	Worn out	6	5 01	Half worn.
Cordage	-	-	-					10 00	
Duck and twine	-	-	-						
Sole leather	-	-	-						

[ Doc. No. 78. ]

# REPORT—Continued.

Workmanship, &c.	By the contractor.			By the Engineer Department.		
	Quantity.	Cost.	Remarks.	Quantity.	Cost.	Remarks.
Earth removed, yards - - -	{ 9,926	\$3,564 42	Main ditch.			
Brick masonry, do. - - -	995	238 19	Barrack foundations.			
Carpentry - - -	1,920½	10,550 73	Barracks.			
Smithery - - -	-	-	- - -	-	\$1,111 95	Barrack foundation.
Hired labor - - -	-	338 97	Barracks.	47 days	47 00	Barrack foundation.
Soldiers' labor - - -	-	-	- - -	89 do.	13 35	Orderly and painter.
Mules - - -	-	-	- - -	-	28 00	Barrack foundation.

DAUPHIN ISLAND, November 1, 1821.

I certify that the above report is correct.

C. A. OGDEN,  
Lieutenant U. S. Corps of Engineers.

## B.

*Case of the legal representatives of Messrs. Farrow and Harris.*

By an act of Congress, passed on the 14th July, 1832, entitled "An act for the relief of the legal representatives of Nimrod Farrow and of Richard Harris," the Third Auditor of the Treasury, the Second Comptroller, and Charles Gratiot, are authorized and directed to examine the claims of those representatives against the United States, arising from a contract to construct a fortification at Dauphin island, on the principles of justice and equity; and they are empowered and directed to take further testimony on the part of the United States, if they shall think the same necessary to accomplish the ends of justice; to prescribe rules for taking testimony on behalf of, and giving notice to the parties respectively; and to call on the claimants for books and papers relating to expenditures under said contract; and they are directed to report the testimony so taken, with their award, to the next session of Congress.

The claims presented, under this act, to the commissioners thereby appointed, are detailed in an argument, wherein, after setting forth the grounds on which the claimants deemed the award made in this case by a former commissioner, Thomas Swan, Esq., to be erroneous, and defining the extent to which they considered the allowances he awarded to be insufficient, the claimants have introduced a recapitulation, as follows:

Profit on 30,000 yards brick masonry, over and above that allowed by commissioner, - - -	\$40,500 00
Do. on 100,000 yards excavation and embankment, - - -	11,200 00
Do. on timber work and carpentry, omitted entirely by the commissioner, - - -	18,907 00
Do. on the increased scale required by the plan of the Engineer Department, - - -	37,424 00
Additional allowances for damages for detention, - - -	4,293 00
	<hr/>
	112,324 00
Deduct \$1 35 on each cubic yard of masonry, and 11.2 cents on each cubic yard of excavation and embankment made and paid for. The proposed deduction would amount to about - - -	2,940 00
	<hr/>
	\$109,384 00

In pursuance of the authority given by the act, the production of the books and papers it refers to was required; and, after the reception of such as the claimants possessed, and separate examinations of the case by the commissioners, it was decided by the latter to take further testimony on the part of the United States. For this purpose a set of interrogatories was prepared and laid, with a list of the witnesses designed to be applied to, before F. S. Key, Esq., the attorney of the claimants, who added thereto other interrogatories on their behalf. Evidence in answer thereto has been obtained from Colonel Gadsden, Major De Russey, Captain Delafield, Lieutenant Ogden, and J. F. Ross, and which, with the interrogatories, will accompany this report. Since the receipt of this evidence, the case has been again examined by General Gratiot, by whom a report, descriptive of the mode in which he has concluded that the same should be ad-

justed, has been prepared, and submitted to the Second Comptroller, and been by him referred to the Third Auditor, with an intimation of his approval thereof.

The views which the investigations of this case, by the Third Auditor, have led him to take of it, differ widely, in nearly every material respect, from those presented in that report, and will preclude his concurrence in an award such as is therein proposed. The report, after reciting some of the stipulations of the contract, and of the particulars of a plan of the fort upon which the contract is expressed to have been predicated, proceeds thus: "But by virtue of the discretion with which the contract invested the Government, to prescribe any work requiring for its construction a greater quantity of masonry than 30,000, and a greater amount of excavation than 100,000 cubical yards, it appears, from an official communication, addressed by the Chief Engineer to the honorable the Secretary of War. and by the latter to the chairman of the Committee of Claims in the House of Representatives, under date of the 24th February, 1827, (see Doc. 21, 2d session 20th Congress,) that the plan of the work above referred to, was enlarged to an extent set forth in that communication, was adopted as that of the work to be erected on Dauphin island, and prescribed to Harris for his government when his operations commenced. (For a corroboration of the evidence of enlargement, see Col. Gadsden's answer to the 12th question, in his letter of the 24th September, 1833.) At this stage of the transaction, the general terms of the contract assumed a new limitation with regard to the minimum quantity of work, and all option on the part of the Government under the contract to change the plan so as to involve a less amount, ceased; for it is conceived, that from the time Harris was notified of the adoption of this plan, the contract, together with the evidence of the plan, having been prescribed to him, he completed his engagement to construct the work defined by that plan, and no other requiring less work for its execution." The Third Auditor has not been able to discover any testimony to satisfy him that the original plan ever underwent an enlargement, nor any whatever, tending, in the remotest degree, to show that additional work, to an enlarged plan, or even that the entire work specified in the original plan, was, either at the commencement of the contractor's operations, or at any after period, prescribed to him for execution. The letter of the Chief Engineer, to which reference is made, contains as follows:

First inquiry. What number of bricks were necessary to have completed the whole works at Dauphin island, and taking as the basis of the calculation, the increased size of the fortification.

Answer. The whole number of bricks requisite for the execution of the original plan would have been - - - - - 15,997,539

The additional number requisite to execute the plan as altered - - - - - 1,755,900

17,753,439

From which, deducting the number delivered - - - - - 2,426,087

There would remain as the number necessary to complete the work - - - - - 15,327,352

The latter part of the fifth inquiry. "How many [cubic yards of earth]



remained to be removed to complete the work on the plan adopted and in progress?"

Answer. The number of cubic yards of earth to be excavated by the original plan, was - - - - - 95,025.17

This quantity does not include 22,300 cubic yards which was necessary to be procured for the embankment of the glacia, but which would not have been furnished by the excavations connected immediately with the work.

The number of yards required to be excavated in the fulfilment of the altered plan, was - - - - - 66,486.84

From which, deducting the number to be excavated - - - - - 7,250.00

The number remaining to be excavated would be - - - - - 59,236.84

The number of cubic yards of earth requisite to form the embankments contemplated by the original plan was 117,284.42

The number requisite for the altered plan - - - - - 225,818.47

The additional number requisite for the altered plan - - - - - 108,534.05

Upon the information this affords, allowances are made in the proposed award for nearly 3,800 cubic yards of masonry work, and 108,534 cubic yards of excavation or embankment work, more than the quantities designated in the *plan* referred to, as well as in the *claims* preferred by the representatives, and which the commissioners are by the law *authorized and directed to examine and report upon*. As will hereafter appear, the United States are not deemed by the Third Auditor to have been bound to make compensation in respect of any greater quantities of either work than are mentioned in the contract, and, if they had been, evidence more certain than the letter under consideration affords, would, in his opinion, have been indispensable. Major General Macomb, by whom it was written, did not succeed to the office of Chief Engineer till after the abandonment of the contract by the United States, and may therefore be presumed to have himself possessed no certain knowledge of the facts of the case. From what data he prepared it, does not appear. It was not written till nearly six years after that abandonment, and in the interval Major General Macomb had himself furnished to Mr. Farrow [see page 46, Doc. No. 69, 2d sess. 18th Congress] a statement which corresponds, as to the aggregate quantities of masonry and excavation work, with the plan of General Bernard before referred to, and is entirely silent as to any enlargement of it. The Third Auditor, by letter, inquired whether there were on the files of the Engineer Department any evidences in relation to the adoption of an alteration in that plan, and was informed that no other than that afforded by General Macomb's letter of 22d February, 1827, could be found. A letter of General Bernard, dated in May, 1819, referring to some improvements of casemated flanks to be introduced in the details of the Dauphin island and other forts, was met with, and General Gratiot appears to have viewed this as showing that a change was in contemplation, and the letter of General Macomb as showing that the change was actually made. In February 1821, the Secretary of War was required, by a resolution of the House of Representatives, to report thereto the progress which had been made by the Board of Engineers in *determining* the sites and *plans* of for-

tifications of the coast of the United States, and the *estimates of the expense in completing the several works, &c. &c.*; and, in answer thereto, the Secretary furnished a summary of the operations of the Board, prepared by General Bernard, and the other members thereof, a few weeks only, it may be seen, before the contract was abandoned on the part of the United States, and appended to which there are tables showing the expense of construction of the several works, wherein that of the fort at Dauphin island is set down at an amount corresponding with General Bernard's original estimate of it: and in a report of the Chief Engineer, dated 22d April, 1822, an extract from which is printed in page 21 of the document No. 69 before referred to, he has stated expressly that there was every reason to believe it would have been erected within the estimate. At the contract prices, the *additional work alone* for which allowances are made in the proposed award, would have cost upwards of \$132,000. To acquire affirmative evidence on the subject, if any was obtainable, the commissioners, when deciding upon the interrogatories previously alluded to, adopted one, of which a copy will be here introduced. "Has it come to your knowledge whether an alteration of the original plan of the fort on Dauphin island took place, increasing the quantity of embankment and masonry? If so, what was the increase? When was the alteration made? Was the contractor required to construct the fort in conformity to those alterations? And if so, when?"

The interrogatories, as already indicated, were transmitted to Colonel Gadsden and Major De Russey. Colonel Gadsden was the engineer by whom the fort was laid out, and the work superintended, until the contract was abandoned by the United States, say in April, 1821, and when Major De Russey became his successor. The answer of the former of these officers to the interrogatory cited is as follows: "The plan of the fort was not changed, to my knowledge. In excavating the ditch, we came to springs of water sooner than was expected, and it was proposed to take that water level as the foundation of the masonry, which would have required, of course, the embankments to be proportionally raised, taking the earth requisite (at less labor) from a sand hill at the foot of the glacis on the surface of the earth, instead of from a depth of eight or ten feet below that surface. The change was decidedly favorable to the contractors; but no labor was ever *done under the change*, as there was no earth taken from the ditch which would not have been required under the original plan. The alteration was done with the consent of the contractor; for, had he demurred, I should have insisted on his descending to the depth intended, at the extra cost of pumping up the water." This is the answer which the foregoing extract from the proposed award refers to as "a corroboration of the evidence of enlargement." The Third Auditor cannot view it in that light, nor, if he could, can he perceive that, on the principles of justice and equity, it would warrant any additional allowance to the contractor, under the circumstances described. It is obvious that the change was to have produced a saving of both labor and expense to him, and that its adoption depended on his consent to perform, free of cost to the United States, the increased quantity of embankment work thereby rendered necessary. The answer of Major De Russey is in these words: "I do not recollect, nor do I believe, that any alteration in the original plan of the work on Dauphin island did take place. No part of the main work has ever, to my knowledge, been commenced. I saw no embankment, that

I can recollect, when I visited the island, other than those formed with the excavations of the citadel, which was the only part of the defence upon which there had been some masonry laid."

Confirmatory of this testimony of Major De Russey, it has been found that he, in October, 1821, in answer to a call from the Engineer Department for estimates in relation to the fortifications under his charge, furnished one as to the Dauphin island fort, in which the aggregate cost, designated in General Bernard's original plan, is taken as the basis of it; thus manifesting that Major De Russey at that time, when the period fixed for the completion of the fort had nearly expired, possessed no information of an enlargement of that plan. In none of the many applications on the part of Messrs. Farrow and Harris for redress, did they, or any of their advocates, contend that the *original plan* of General Bernard ever underwent any enlargement. Having, after the discontinuance of the fort, obtained a copy of the estimate exhibiting, in detail, the quantities, &c. of the work of each description the plan required, and finding that it designated more masonry and excavation work than the quantities thereof mentioned in the contract, it was urged, on behalf of the contractor, that the *plan*, and not the contract, ought to be taken as the guide in computing his losses; but beyond what the plan called for, no claim, either by Farrow or Harris, or by the present claimants, was ever set up, nor, as one of the latter has expressly signified, was ever intended to be.

Since the reception of the testimony obtained in answer to the interrogatories, a copy thereof has been furnished to Judge Scott, the representative of Mr. Farrow, and whose letter of remarks thereon, addressed to the Third Auditor on the 3d January last, and placed herewith, will be found to contain as follows: "The claimants never meant to say, as one of the interrogatories to De Russey seems to intimate, that any material change was made in the plan of the work actually ordered by the Engineer Department. All that they have insisted on is, that *the plan* thus ordered shall be taken as the basis in estimating the profits which would have been realized had the contractors been permitted to execute that plan. They complain that the former commissioner, instead of taking that plan as the basis of his calculations, took the minimum to which, by the contract, the United States were restricted." Considering this and all the beforementioned testimony evincing that the original plan never was enlarged, the Third Auditor cannot assent to allowances exceeding \$79,000, made in the proposed award, for masonry and excavation or embankment, *over and above the quantities thereof designated as requisite for that plan*. Other allowances are made in the proposed award, amounting to more than \$32,000, in respect of so much of the masonry and excavation or embankment required for the *plan*, as exceeds the quantities thereof mentioned in the *contract*, and from which the Third Auditor also dissents. The contract, in substance, stipulates that Richard Harris should construct a fort, to be constituted of such walls, ditches, embankments, buildings, parts, and dimensions, as the engineer of the United States *might from time to time prescribe*; that he should furnish all materials of such quality, and all artisans, laborers, and workmanship requisite for the construction of the fort aforesaid, *as might be prescribed by the said engineer*; that the construction should be commenced by him on or before the 1st December, 1818, and be completed on or before the 1st December, 1821; and that he should be paid by the United States for the workmanship aforesaid,

according to certain rates and modes not deemed necessary to be here recapitulated; and it concludes with a clause in these words: "It is also understood that at least 30,000 cubical yards of masonry will be constructed, and at least 100,000 cubical yards of earth will be excavated and removed in constructing the fort aforesaid." The contract, it will be seen, *nowhere refers to any plan*. The Government had to provide a resident engineer to superintend the execution of the work, and the contractor was to perform it as the *engineer might from time to time prescribe*. For the guidance of the engineer, a plan was of course requisite, but none is conceived to have been needed by the contractor, nor has the Third Auditor been able, as before observed, to discover that, prior to the discontinuance of the work, either the original plan of General Bernard, or any other, of the entire fort, was ever furnished to the contractor. The latter had to provide workmen and other means for the execution of the contract; and without having a limitation fixed, up to which at least the United States should be bound to prescribe work, he could neither have safely estimated the extent to which it would be proper to obtain them, nor have securely entered into engagements for their acquisition; and the Third Auditor considers it to have been for this obvious reason alone that the concluding clause, before cited, was inserted in the contract. Had it been the design of the contracting parties that the United States were to be tied down to any plan, the Third Auditor cannot (especially as one had been already formed, and the contract been, as is stated, predicated upon it) perceive why, instead of a stipulation to that effect, there should have been a power to the Government to *prescribe from time to time* what work should be done. Having reserved a power like this, even if at any period the entire work had been prescribed to the contractor for execution, and a plan of it had been given to him for his guide, still the contract, in the opinion of the Third Auditor, imposed no obligation on the United States to complete the same agreeably to such plan. With the right of *prescribing from time to time*, they were, he conceives, at full liberty to make variations whenever and as often as might, on their part, be seen fit; that if, at one time, after fixing on a plan, it should be decided to increase the size of the fort, so, at another, such decision might not only be revoked, but the completion of the work be directed on a scale even below that originally designed, taking care that the limits defined in the contract were not encroached upon; and this, too, without incurring any liability, on the principles of justice and equity, to pay to the contractor for any work exceeding the limits specified in the contract, which might have been planned, but not executed, unless, in order to the performance thereof, the contractor had been led by the prescribing engineer to run to additional expenses, and which, in this case, is not pretended.

Entertaining these opinions, and finding them to be mainly sustained by the award of the former commissioner, an eminent and long experienced lawyer, and by the reports of the Committee of Claims, made on the 14th February, 1827, and the 30th March, 1830, the Third Auditor declines to give his consent to any allowance, in respect of more of either masonry or excavation work than the contract designates.

The allowances made in the proposed award, as to unexecuted masonry and excavation or embankment work, are predicated upon an estimate of possible profits, arrived at with reference solely to an assumed rate of expense, such as the contractor would, as is therein supposed, have had to be



at in completing the work, after the time at which the United States abandoned the contract. Had the Third Auditor considered this estimate to be such a one as ought to be adopted as to any of the work, he could not have assented to its being applied to portions thereof which would have had to be executed subsequently to the expiration of the period allowed by the contract, when the prices of provisions, labor, and materials are represented to have been less, by one-half, than they were at the time the contract was entered into. Of the three years within which the contractor therein stipulated to finish the work, nearly two and a half years had elapsed when the contract was abandoned by the United States. At that time, of the 30,000 cubical yards of masonry, and 100,000 cubical yards of excavation, which the contract bound the United States to prescribe, and the contractor to perform, more than 28,500 of the former, and more than 91,000 of the latter, remained unexecuted, and the completion of which, within the residue of the time fixed in the contract, was quite out of the bounds of possibility; of course, a breach of the contract, on the part of the contractor, had it not been abandoned by the United States, would have been inevitable. If the work, at the time of the abandonment, had been advanced as far as it ought, in order to its completion within the period limited in the contract, only a comparatively small proportion would have remained on which *a loss of profits could have been claimed*. As matters were, a very large proportion thereof must have been left unexecuted at the expiration of that period; and as the United States would have been under no obligation to let the contractor complete this thereafter, they would, of course, if they had been disposed to permit him to do so, have been at liberty to treat with him for its execution on new terms, by which they might have reaped the benefit derivable from the great reduction before alluded to in the prices of labor, provisions, and materials. Hence, in the opinion of the Third Auditor, the reduced prices would not, on the principles of justice and equity, have served as fit guides for estimating a suitable allowance as to portions of the work which the contractor could not have executed within the time fixed in the contract, unless it should appear that the smallness of the progress he had made in the work was attributable, not to any neglect or mismanagement on his part, but to some default on the part of the United States. The Third Auditor, therefore, endeavored to ascertain what the causes were, and, in the communications of the superintending engineer, written while the work was progressing, information on this point was met with, which will be here introduced.

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*Extract from a letter of Captain Gadsden to the Secretary of War, dated Mobile Point, August 7, 1819.*

In reporting to you on the subjects required, it is necessary to premise, that on my arrival in Mobile bay in January last, I found both Hopkins and Harris, with a train of laborers, prepared, as they reported, to commence operations, and rather dissatisfied at the delay which had been occasioned by the non-arrival of an engineer. Their complaints seemed plausible; and as they must have been exposed to considerable expense in bringing out and supporting these men for nearly three months, I deemed it an act of justice to meet these expenditures. A difficulty arose, however, about the construction of the contract as explained; and as these in-



dividuals had contracted debts under their construction, which had not been settled, their credit was suffering; and as an impression had gone abroad that this was to be ascribed to the non-fulfilment of Government of their part of the contract, there was an additional motive for promising a liquidation of their demands. I did not know at this time of any advances having been made at Washington. On my arrival in Orleans, Mr. Coxe spoke of the amounts he had advanced, and of \$13,000 paid Col. Hopkins in Washington. Of any advances to Col. Harris, there were no advices to either of us; and not until the last of April was there any information to me of the \$45,000 paid him. I knew these men only as the contractors whom the Engineer Department had selected for the erection of certain works. With the Executive, I felt the same solicitude that these contracts should be fulfilled, and the works completed. To secure this desirable object, I would not have shrunk from any responsibility justifying the assumption upon the result. I felt for and with the contractors. I knew the difficulties they had to contend against; I saw they had not anticipated them; I saw, likewise, that they had been somewhat embarrassed at the commencement; I still believed, however, the contract was a favorable one, and that, under judicious management, they might fulfil the wishes of the Executive, and secure a reasonable profit to themselves. I, therefore, gave them a fair start, pointed to the objects which required their unceasing efforts, and promised them all the aid and assistance in my power. I wrote for authority to sanction that assistance, because I believed it necessary; but, before the authority arrived, I had determined to withhold any further aid as imprudent and hazardous. It has become, therefore, my duty to report to you what I have reported to Colonel Armistead, that it is my opinion neither Hopkins nor Harris will ever execute their contracts. If they can command the resources necessary, they would fail from mismanagement, and a total ignorance of the work they have undertaken. Connected with their ignorance, there are circumstances which have transpired that has shaken my opinion of their integrity. They have long since received my decision to give them no other aid than that sanctioned by the contract, with the exception of receiving the bricks manufactured at their yards, at their value on the spot, deducting the price of freight and delivery to the points wanted. They state to me they will be able to progress; I have no confidence in their ability or report, but am inclined to believe they expect support from Washington. If they receive any from that quarter, it is in direct opposition to my requests long since made to the Engineer Department. On the subject of the advances made, work performed, materials collected, and opinion as to the completion of the work in the time stipulated, I report. In this report, I embrace the advances made in Washington, and by Mr. Coxe, though these amounts have not been appropriated to the labor performed and materials collected. Every thing was done after my arrival, and my own advances rather exceed what has been done. Mr. Coxe's advances seem to have been to pay the expenses of men to this country, and provisions consumed subsequently to their arrival. They were made on the drafts of the contractors.

Richard Harris received in Washington - - - \$45,000 00

*Not one cent of this sum brought to this country, or appropriated to the forwarding of the works. He informs me he left the amount in Virginia with a Mr. Farrow, to purchase negroes.*

Received from Mr. Coxe	-	-	-	-	\$8,685 50
Received from myself up to the 31st March	-	-	-	-	8,451 11
Do do do 30th June	-	-	-	-	9,946 24
					<hr/>
					\$72,082 85
					<hr/>

Against this:

Excavation at Dauphin island	-	-	-	\$7,000
Labor performed at brick yard, tools, mules, oxen, carts, &c., cost \$7,044, but from mismanagement cannot be estimated at more than	-	-	-	\$5,000
				<hr/>
				\$12,000 00

Barracks constructed for himself on island, valued at \$2,000.

But for the \$45,000 advanced in Washington, and which has been misapplied, Col. Harris has not received much more than what he was authorized to do under the contract, and the liberality extended to him by you for the payment of his expenses to this country. But any further advances would be injudicious, from his total ignorance of the work he has undertaken, his want of energy, his dread of the water, climate, and hurricanes of the country, his want of knowledge of mankind, and decision of character necessary to manage and control them to advantage, and, finally, his disposition to hypochondria. I have been thus minute that you may be enabled to form a judgment of the difficulties I have had to encounter without any personal military assistance, and how far the results anticipated are correct deductions from the facts stated. These contracts are difficult of execution, from the novelty of the situation in which men brought up and educated at the North, and in a dense populated country, find themselves, and from the innumerable difficulties from climate, a new country, and other causes, which an old resident alone knows how to anticipate and estimate. Success required peculiar and judicious management, a perfect knowledge of mechanical operations, and the most economical arrangements. Hopkins and Harris possess not a single requisite quality, and, connected with this natural inability, they have so abused their credit, that it is a common observation in this country, that they have already failed. I have endeavored to preserve their credit, but to no effect, and the liquidation of their debts one day is only an encouragement to additional embarrassments the next. I write with some degree of warmth, because my reputation may be innocently involved in the failure of these men. The community at large may not know that my instructions are not to execute the work, but to see others do it. If there is a possibility of getting rid of these men, it would prove to the advantage of Government, and with order to execute the work, and authority to adopt the means deemed necessary, I would pledge my life on the result. It may, however, be impossible to effect this object; and if these men must be permitted to proceed, it is my opinion that any further advances would be hazardous. They have their ultimatum from me that I shall adhere most rigidly to the contract; and if success does not crown their efforts, no additional loss can be sustained by Government, excepting the loss of time, and the disappointment in not having the works executed as expected. It may be necessary to observe that the longer these men are permitted to hang on doing nothing, the weaker becomes their security. Those who have signed their bonds have already received intimation of prospects, for I shrewdly suspect both Donnelly and Farrow have their secret emissaries here, and will adopt means

ere long to place out of the grasp of Government what may be forfeited by the principals in the contracts to which they have become securities. After the above remarks, it would scarcely be necessary to express an opinion as to the probability of the works being completed in the time specified. It has, however, always been my impression that the time was too limited, even under the most judicious management. Five years ought to have been allowed ; it would have taken three years in an old and settled country, where materials could have been obtained with facility, and laborers and mechanics commanded at pleasure. If Hopkins and Harris are able to progress next winter, an extension of time will be indispensable.

NOTE.—The letter from which the foregoing extracts have been made, also contained reports as to the works at Mobile Point and the Rigolets, constructing under contracts entered into by Col. Hopkins and Messrs. Bennett and Morte, and was transmitted in the one next set forth.

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MOBILE POINT, *August 7, 1819.*

SIR : I enclose through you a report for the Secretary of War, as directed by him. I am astonished at Mr. Farrow's attempt to procure an advance from you. Be assured it was never intended to forward the work at Dauphin island, but rather to promote his own speculative views. Indeed, I am disposed to doubt whether he had authority from Colonel Harris for making the demand.

Respectfully, your obedient servant,

JAMES GADSDEN,

*Captain of Engineers.*

TO COLONEL ARMISTEAD,

*Chief Engineer.*

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*Extract from a letter of Captain Gadsden to Colonel Armistead, Chief Engineer, dated Mobile Point, September 19, 1819.*

The excavation at Dauphin island has been suspended, and with that at Mobile Point will not be recommenced until there is a reasonable prospect of an ample supply of materials, so as to commence the brick work as soon as the depths of the foundation are attained. The excavation was originally commenced contrary to my judgment, but as an accommodation to the contractors, and on their own responsibility. Persuaded, however, that, from the character of the soil, the ditches will refill before materials for the revetments can be collected ; and further convinced that the losses sustained from refilling must ultimately fall upon Government, from the inability of the contractors to meet them, I have deemed it advisable to suspend this part of the work until it can be conducted to advantage. I have directed the attention of the contractors exclusively to the collection and manufacturing of materials, and hope that my reports the ensuing year may be more flattering on that subject than those of the last.

*Extract from a letter of Captain Gadsden to Colonel Armistead, dated Mobile Point, October 4, 1819.*

I here beg leave to repeat what was communicated to the Engineer Department two years ago, that the great difficulty to be contended with in constructing of permanent defences in this country was the collecting and the transporting of materials ; that the latter would have to be manufactured either by Government or individuals disposed to undertake a contract attended with all the delay and expense consequent upon forming of such necessary establishments. In opposition to this opinion, founded on a knowledge of the country and its resources, the contractors embarked for the South with a train of laborers, masons, carpenters, &c., as if they were coming to an old settled country, and had nothing to do but to purchase materials at command, and commence operations. They have suffered for their ignorance, and I could wish that the losses may not ultimately fall on Government. I was compelled to control my acts by the situation of the contractors, and, to afford them every facility, the laborers brought out were permitted at their risk to be employed for the time for which they were bound, in the excavation of the earth, &c. ; a work which should not have been commenced until materials could be obtained, or a prospect of their delivery encouraged. The time of their services expiring, the excavation has been suspended, and will not be renewed until materials in sufficient quantities are collected. The prospects on this subject in Mobile bay are discouraging. A disease of a most malignant character had early this summer suspended nearly all operations at the brick yards, and the labor of those who escaped the effects of an unfriendly climate has measurably been lost by the inclemency of the season. Such a flood of rain and succession of storms is not in the recollection of the oldest inhabitants. Independent of the moneys expended, I may with candor state that one year has been lost to both the contractors at Mobile Point and Dauphin island. They have gained nothing but a little experience, from which they may profit, though I have little hopes they can ever recover from the losses sustained.

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*Extract from a letter of Captain Gadsden to Colonel Armistead, dated New Orleans, November 20, 1819.*

I am anxious for your opinion, as regards the last arrangement made with Farrow and Morte, whether the advances received preclude them from any further payments until these amounts are covered by labor performed and materials delivered. I am satisfied, from the disposition made of these funds, they do not anticipate such a construction, and that such a construction would produce such embarrassment as to paralyze at once all their efforts. Mr. Farrow had not arrived at Mobile when I left there ; Mr. Harris had not heard of or from him, and his tardy movements had produced much embarrassment to the concern. Mr. Farrow had sent out some men and tools ; they had arrived. Harris had not the means of discharging the expenses of transportation, and the captain of the vessel would not permit the tools to be landed without the



amount of the freight, &c. being paid. Though indisposed again to make any advances to Mr. Harris, the peculiar circumstances attending this case compelled me to become responsible for eight hundred dollars. The men could consequently proceed immediately to work. Harris has his brick yard in such a state of preparation as to encourage a hope that, under judicious management, a large proportion of the bricks wanted by him may be manufactured the next season, if disease does not again interrupt his operations. On this subject, however, apprehensions must always be entertained; and so long as white laborers of northern constitutions are employed in this inhospitable climate, my confidence in the successful efforts of the contractors must be shaken.

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*Extract from a letter of Captain Gadsden to Colonel Armistead, dated Mobile Point, December 3, 1819.*

In a communication to you of the 10th of November, and a subsequent one of the 1st of December, I stated to you that the tardy movements of Mr. Farrow had not only deranged the plans of Mr. Harris, but had added greatly to the embarrassments under which that concern had long labored. These two gentlemen, though united in the same object, seem to have acted in such opposition to each other, or with so little concert, as almost to encourage a belief that the grand object of faithfully constructing the work on Dauphin island was lost in their private views or personal designs against each other. Harris informs me that he has never heard from Farrow; that the first intimation to him of the arrangement made by that gentleman was from me, and that he is not disposed to sanction it, if it in the least militates against the plans which he had formed to ensure a favorable result to his contract. Harris's situation is deplorable; without credit or resources, his men have been in a state of starvation for the last three weeks, and their confidence destroyed in his future ability to pay them, or in the tale he has for some time amused them with, of the expected arrival of Farrow with funds; they have deserted in every direction. Farrow, on the contrary, has shipped out negroes and provisions consigned to me, and under such ambiguous instructions as renders it problematical whether I shall act in the affair. He states in his letter that he has acted under your advice in shipping the negroes to me, and in requesting that they may be kept employed on the works until his arrival. I know not how to give credit to this communication, as an act of this character would be interfering with the contractor, Harris, in the details of his operations against which you have so cautiously guarded me. Indeed, Farrow's conduct exhibits, evidently, a distrust in Harris; and if anxious to promote the fulfilment of his contract, he has adopted the very steps to defeat it: he has crushed his credit long tottering, and destroyed all the confidence which it was necessary those in his employ should have in his ability to fulfil his obligations. My hopes in your last communications, that the arrangement with Farrow would give a new character to Harris's contract, are blasted.



*Extract from a letter of Captain Gadsden to Colonel Armistead, dated Mobile Point, February 5, 1820.*

I am happy to hear of the departure of Mr. Farrow from Baltimore for this place. We have no tidings yet of him, though it is hoped on his arrival that the "means he has provided, and his capacity to apply them advantageously," may produce the favorable results you seem to anticipate. As yet, what he has done has only added to the embarrassments of Harris: there has been no concert between the two men, and, if they were designedly disposed to act in opposition to each other, they could not have played their parts better.

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MOBILE POINT, April 20, 1820.

SIR: I reported to you the arrival of Mr. Farrow on the 20th of February last. Since which period, much time has been consumed in negotiations between Farrow and Harris, with a view of securing to the former the control of affairs connected with Harris's contract, or of entrusting them to a competent agent possessing the confidence of both. Farrow found Harris laboring under all the embarrassments reported to you, and disposed to ascribe the difficulties encountered, and the deranged state of his affairs, to the untimely interference of Farrow, and the injudicious application of the funds placed at his disposal. The arrangements of both had certainly been conducted without judgment, or, at least, without that concert indispensable to effect the objects at which both should have arrived. Engulphed by difficulties, instead of mutually forgetting and amicably combining to fulfil the engagements for which they were both obligated, their vital interests seem to have been lost sight of in mutual recriminations of each other, and in systematic oppositions to each other's designs. It is painful for me to trace these gentlemen through all their private bickerings and recriminations, in the course of which facts were disclosed as well calculated to excite suspicions of their integrity as seriously to affect the public interest. The confidence of the community in these gentlemen had become shaken. Creditors had been led to expect a liquidation of their demands on the arrival of Colonel Farrow, and their dissatisfaction increased in proportion to their disappointment; the laboring men in their employ, with many months' pay due to them, and latterly but scantily subsisted, now became mutinous; writs and attachments threatened from all quarters; and neither Farrow nor Harris had the resources necessary to avert the storm, or ability to progress with the work they had undertaken. In this critical state of the contractors' affairs, General Starke, from South Carolina, made an offer to become a purchaser of half of Harris's contract, and, under his control, to have the work on Dauphin island constructed. His proposals were finally acceded to, and the documents, deeds, &c. herewith enclosed show the terms on which he has been engaged. General Starke appears to me an active, intelligent man, and has a large disposable force of negroes, which he will be enabled to apply immediately to the fulfilment of the contract. As an additional security to Government for the large advances made to Harris and Farrow, but more particularly not to permit all operations to cease by leaving the brick yards, negroes, and other property of the contractors purchased by public

funds, rifled from them by private creditors, it became necessary for me to assert the Government precedence over all other creditors, and obtain an assignment of all the contractors' property in trust until the terms of their contract are fulfilled. A copy of the deed is herewith enclosed. From the arrangements which have been made from the ability and resources of General Starke, and the disposition he has evinced to bend his individual efforts to the fulfilment of Harris's contract, a hope is now encouraged of a favorable result. Starke demands, as he needs, no advances. All he requests is that his labor and materials, as delivered, may be paid for within the terms of the contract, making a deduction of a certain per centage, so as gradually to cover the large amounts which have been paid to Harris and Farrow. With a hope that my recognising General Starke, without weakening the security given, as the agent of Farrow and Harris, and the other arrangements made to secure the Government on Harris's contract, may meet with your approbation,

I remain, respectfully, your obedient servant,

JAMES GADSDEN,

*Captain of Engineers.*

Col. W. K. ARMISTEAD,

*Chief Engineer.*

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The advances in money by the United States, on account of the contract, had, at this period, exceeded \$128,600, and the books and papers produced by the claimants relating to the contractors' expenditures under it, tend, in a great degree, to corroborate the statements contained in the foregoing extracts, as well with respect to the non-application by him, to the object for which he received the same, of a large amount of those advances, as to the embarrassments under which he was laboring. Of the disbursement, for purposes connected with the contract, of more than a very small portion of the \$45,000 he received before he began the work, those books and papers cannot be found to contain the slightest evidence. Preparatory to a commencement of it, he purchased, and forwarded to Dauphin island, provisions and materials to a considerable amount, but the cost thereof, including the freight, &c. had, after the articles were delivered there, to be advanced by the United States officers, as had also chief of the expenses of transporting the workmen he sent out to that place. In the interval between his commencing operations and entering into the arrangement with General Starke, the advances, in addition to the \$45,000, exceeded, as already indicated, \$83,600. Yet the utmost that the books and papers can be found to afford proof of the contractors' *having actually paid* for objects connected with the contract previous to that arrangement, is less than \$50,000 altogether, and they show that he owed upwards of \$28,000, on notes given either previous thereto, or shortly thereafter, to above a hundred different creditors, and also that other debts, amounting to nearly \$60,000 more, were then due to Messrs. Ketcham, Doane, Clapp, Eaton, Vandemburgh, Rabun, McCutcher & Co., Rose, Lewis, and various other persons. Messrs. Harris and Farrow having had, agreeably to that arrangement, to furnish an additional number of slaves, the latter proceeded to New Orleans, and bought between thirty and forty. It turned out, however, that he did not pay for them, and that, although included

in the schedule annexed to the trust deed, taken by Captain Gadsden, as related in his letter, they had been previously, as he afterwards learned, mortgaged to the sellers, and, in consequence whereof, and of Mr. Cox's having rendered himself responsible for, and subsequently paid the purchase money, the United States have had to reimburse the amount, being \$26,250. And as to the negroes previously purchased, it appears, by the correspondence records of the Engineer Department, that a letter was written therefrom to Captain Gadsden, on the 6th June, 1820, containing as follows: "With regard to Farrow, I have good reason to apprehend that the negroes taken by him from this country to Mobile are mortgaged, as well as the thirty-five purchased in New Orleans. I am informed that the negroes purchased in Virginia were conveyed to his surety before he embarked for Mobile."

Nearly half the period allowed by the contract for the completion of the fort had expired when the arrangement with General Starke was entered into; and, at this time, all that appears to have been done towards the performance of the contract, (save so far as regarded the preparation of brick yards, &c., then generally finished, as alleged in E. Clark's deposition, No. 5,) is 8,562 yards of excavation—work, the execution of which is shown to have been premature, and to have been permitted merely as an accommodation to the contractor, and with a view of lessening the embarrassments in which he had involved himself. From the date of that arrangement until the abandonment of the contract by the United States, in April, 1821, General Starke is declared to have had the sole control, and with a force of two hundred negroes in his employ, besides other assistants. Within this period of more than a year, and during which the work is declared to have been in a prosperous and successful course of operation, it appears that the number of bricks made and delivered was less than two and a half millions; that the masonry executed was no more than about 1,446 cubical yards; that the earth excavated did not exceed 995 cubical yards, two relays, (equal, as understood by the parties to the contract, to only one-fourth of that quantity of complete excavation,) and that but a small amount of carpenters' and smiths' work was performed. Taking into view, therefore, the excessive proportions that remained to be done of the quantities of work which the United States were bound by the contract to let the contractor execute, if he did it within the time therein stipulated; the utter impracticability, on his part, to have finished the same within that period, or within less than between two and three years thereafter; the circumstance of its having arisen from his own neglect or mismanagement that so much remained unperformed, notwithstanding he, in order to facilitate his operations, had been furnished by the United States with large advances of money beyond those which the contract gave him any rightful claim to receive, it did not appear to the Third Auditor, as he has already intimated, to be just towards the United States, that the low prices of labor, provisions, and materials, &c., current at the time the contract expired, should be taken as guides for an estimate of the contractors' loss of profits on the very large portion of the work which must inevitably have then remained unexecuted, and, so far as regards which, the United States might, as before observed, have availed themselves of those prices by new stipulations, in the event of their permitting him to finish it. An allowance in respect of the whole of the unfinished work, according to an estimate of profits, predicated on such prices, would far exceed the profits

which could have been realized by the contractor in case he had, agreeably to the contract, completed the fort within the time it prescribed ; and the claimants surely cannot be entitled to derive any benefit from his mismanagement and delay. To be adapted to *all* the unfinished work, the estimate ought, on the principles of justice and equity, in the opinion of the Third Auditor, to have been formed with reference to a fair average of such rates of expense as would necessarily have attended the execution of it within the time limited in the contract, in case the contractor had, (as he must have, in order to its completion within that time,) throughout, from the commencement, proceeded regularly therewith.

As concerns the very important item of slave labor, the proposed award assumes that the contractor was the *owner* of the entire alleged force of two hundred slaves, and that he, of course, would have had to pay no wages for their services, nor have been liable, in respect of them, to any other expenses than such as related to their maintenance, interest on their cost, insurance against loss, medical aid, &c., amounting, altogether, at the rates assumed, to about \$11 71 per month each. No proof can be found that the contractor ever had at the works one-half as many slaves, *his own property* ; the utmost number there, *belonging to him*, is shown, by the schedule annexed to the deed of trust to Captain Gadsder, to have not exceeded eighty ; and this number appears to have included four children and twenty-four women and boys. Deducting the children, and reckoning, as is understood to be the rule with regard to women and boys, two of them, on an average, as equivalent to a man, the effective force of slaves, the property of the contractor, would be reduced to sixty-four ; and this, it would seem, [see printed document No. 104, 1st sess. 19th Cong. page 38,] was, in 1820, diminished, six by death, or by running away. The number, therefore, to be calculated for as the property of the contractor, would be less than sixty. As to all other slaves employed, the estimate ought to be regulated by what the contractor must, in addition to the cost of their maintenance, &c., have had to pay to their owners for their services, in the shape of wages or otherwise. Amongst the papers obtained from the claimants, an agreement has been found, dated April 12, 1820, (two days after the arrangement with General Starke,) by which Messrs. Harris and Farrow are shown to have then hired of Nicholas Weekes seven negro men (described as being well acquainted with making and burning bricks) until *the end of the year* 1821, at \$25 per month each, exclusive of provisions ; and the books of the contractor show that they had been hired from the 1st September, 1819, at the same wages. According to their agreement with General Starke, Harris and Farrow were to contribute a hundred slaves, and shortly thereafter, they, as already indicated, by purchases in New Orleans, increased the number of which they were the owners to eighty. Whether or not, to complete the one hundred, they procured on hire any others than those of Mr. Weekes, the documents afford no means of ascertaining. General Starke was, by the agreement, to supply as many as would be equal in labor to those furnished by Harris and Farrow, and was to be compensated, not in the way of ordinary wages, but in proportion to the clear profits, of which he was to receive one-half, or more, as the number of slaves he supplied might exceed in ability the number furnished by the contractor. To enable General Starke to comply with the agreement on his part, he appears to have, on the day of its date, entered into another agreement with George Fisher,



by which the latter was to furnish 40 negroes, and was to share equally in the profits, in proportion to the number of negroes engaged on the works. Whatever General Starke might have had to receive, in respect of his and Mr. Fisher's quota of slaves, together with the cost of their maintenance, &c. would have been the price of their labor to the contractor, and would constitute, of course, the amount of expense to be taken into view in forming, so far as regards them, an estimate of the contractors' loss of profits. The profits which General Starke was to have shared for himself and Mr. Fisher, were those which might have accrued after he had the control, subject to no further diminution in respect of prior transactions, than of the appraised value of the property delivered to him, and of the improvements necessary to the completion of the contract with the Government, which had been actually made; and the appraisers were to take into consideration merely the actual value of the improvements and materials, *without regard to the costs thereof*, and only with a view to their value as regarded that contract. As to whether or not such an appraisal was ever made, or, if made, what it amounted to, the books and papers produced contain no information. Under circumstances such as have been described, the Third Auditor could perceive no possible way of arriving at even the probable rate of compensation which might have been payable in respect of the slaves of General Starke and Mr. Fisher, nor could he, involved as this case appeared to be, devise any feasible mode of adjustment more in consonance with the principles of justice and equity, than by taking, as to the whole force of negroes employed under General Starke's management, the rates of wages current at the time in respect of workmen of this description, (in addition to such as were payable for the services of superintendants, overseers, master mechanics, and other white assistants, and to the expenses of maintenance, &c.) as guides to the calculations. On this point there was found to be in a part of the argument presented by the claimants, as beforementioned, an observation as follows: "To this inquiry, [what would it have cost the contractors to finish the work with the means at their disposal?] the answer would have been, little more than to feed and clothe their slaves, and pay the wages of a few master workmen and overseers. At all events, not more than the *hire of their slaves*, in addition to food and clothing, for such work as their slaves could do. Amongst their slaves were many brickmakers, bricklayers, carpenters, and smiths." The course suggested, therefore, seemed to be in accordance with the views of the claimants themselves, and to be one to which there could be no reasonable objection on their part, inasmuch as (supposing them to be correct in what they have said as to the large enhancement in the profits) the amount Farrow and Harris would, in effect, have had to pay to General Starke, on account of his and Mr. Fisher's quota of slaves, over and above ordinary wages for them, would have been far more than the claimants could lose by having the calculations as to the slaves of which Harris and Farrow were the owners, regulated by such wages. Hence, for the purpose of obtaining evidence on this head, an interrogatory was proposed as follows: "What was the rate of monthly wages paid at or in the vicinity of Mobile, in 1821, for the hire of negro men, distinct from the expense of providing them food, clothing, and other necessities, and the amount payable for their taxes? And what, at that time, would have been the monthly expense per man under each of those heads?" And no evidence was sought either as to the cost of slaves at the time, or



as to the practicability of effecting an insurance on them on any terms. The answer of Col. Gadsden to that interrogatory is to this effect : "Negro laborers, in 1820 and 1821, in Mobile, were scarce and wages high, varying, as you could contract with the owners, from 20 to 30 dollars per month. I have no knowledge of amount of taxes, or of what would have been the expenses, monthly, for clothing, provisions, &c." Lieutenant Ogden's answer is in this form : "Unknown to the deponent. The first negro man employed at Mobile point was at the rate of twenty dollars per month, and the deponent would estimate the expense of a negro man in 1821 thus :

Hire (or value of labor,)	-	-	-	\$20 00
The clothing would not exceed	-	-	-	1 25
Subsistence, 1 bushel corn 62½, 10 lbs. pork 50,	-	-	-	1 13
Taxes 87½ per annum, .072	-	-	-	7
Medical attendance,	-	-	-	75
				<hr/>
				\$23 20

In making the above estimate the deponent has taken into consideration the manner in which the negroes were clothed and fed at the Red bluffs and Dauphin island." In his explanatory answers, he has set down the clothing at \$1 50, and the subsistence at from \$3 50 to \$3 75 per month. The answer of Major De Russey, is as follows : "I cannot answer this question with certainty: I, however, believe, to the best of my recollection, that in the year 1822, on Mobile point, black men were hired as laborers at from \$15 to \$18 per month, and black mechanics at from \$22 to \$26. These prices were given, independent of the provisions furnished them. I know nothing of the taxes, but believe that the monthly expense, including the hire, varied from \$22 to \$25 per month for the laborers, and from \$29 to \$33 per month for the mechanics. It is here proper to observe, that very few black mechanics could be procured about Mobile, and that most of those employed on the public works were young negroes, taken from the most active among the common class of hired negroes, and were only paid as laborers until they had become proficient as mechanics." Major De Russey seems to have misremembered the year, as it has not been found that hired slaves were employed at Mobile point before 1823. For those then employed, wages are shown by the receipt rolls to have been paid at \$18 per month for men, at \$12 for women, and at \$5 to \$12 for boys. The answer of Jack F. Ross is, "I cannot say what the rate of monthly wages in 1821 for negro men were, but think about \$20 per month, exclusive of taxes, physicians, clothing, &c.; the former of which was about 87½ per head, and the two latter about 75 each." The answer of Captain Delafield applies to a later period and to a different place, and is, therefore, not inserted here. In the case of Colonel Russell, who became concerned in 1820 in a contract for constructing the fort at Mobile point, and for whose relief an act was passed, depositions were adduced by him, [see vol. of Reports of Committees H. R. 1st session 19th Congress, No. 149, fo. 41 and 44,] obtained from his own agent, Samuel Love, and Major E. Montgomery, to each of whom he propounded an interrogatory, inquiring the cost of a brick yard made and formed by him in 1821. The answer of Mr. Love is as follows : "The cost of the brick yard at Owensburg, and its appurtenances, would be hard for me to state precisely ;

but, estimating the number of hands and overseers, &c. at their current prices, engaged in and about the said brickyard, &c. will be, viz.

Say average quantity of 100 negroes from April to October, inclusive, will be 7 months, negro men hired at \$20 per month, is	-	-	-	-	-	\$14,000
Say provisions, transportation, and clothing said negroes,	-	-	-	-	-	6,000
Say overseers' wages,	-	-	-	-	-	1,000
Lumber and plank for brickyard, I believe to be about,	-	-	-	-	-	500
						<hr/> \$21,500 <hr/>

Part of those 100 hands worked on and about the brickyard at Owensburg until December following, but what number I do not recollect, so that this extra time and number of hands will make up the deficiency of women being rated at prices of men in this estimate." Major Montgomery testified that he could not answer the question particularly, and that the only data to govern his answer were the number of hands employed, and the time expended; in describing these, he has stated, "I think he had about 100 negroes employed. *Russell was to pay for the negro men that he hired \$20 per month, besides clothing them and paying their taxes.*" Mr. Fisher, in a statement on oath recently exhibited by him, after representing himself to have had an interest in the contract equal to one-fourth, and to have on his part put upon the works 55 hands, has set down their wages at the following rates per month, viz. 3 blacksmiths at \$40 each, 2 carpenters and 1 wheelwright at \$35 each, 4 wagoners at \$25 each, and the remaining 45 at \$20 each. The lowest rate mentioned in any of the testimony referred to (with the exception of Major De Russey's, and which applies to an after period,) is, it will be seen, \$20 per month; and taking even this, with adequate additions for subsistence, clothing, medical aid, taxes, and the compensation of overseers and superintendents, (an estimate of which will be hereafter introduced,) the sum arrived at in the proposed award as the annual cost of a slave will appear obviously too little by more than one-half; and as the calculations therein of the expense of making bricks, mortar, &c., and of executing the different kinds of work, are all in an important degree dependent on the rate assumed as the yearly cost of a slave, they must necessarily, of course, if that be erroneous, be so likewise. Independent of this as regards the article of bricks, the estimate presented in the proposed award has been made with reference to a size requiring only 462 and a fraction for a cubic yard of masonry, a size assumed apparently as the result of an analysis of the numbers described as requisite for the whole work, in the communication of General Macomb of the 23d February, 1827, already remarked on, and which neither mentions any size, nor explains the mode in which the numbers were arrived at. As none of such a size appeared to have been ever used in the work, as the contractor for those which had been delivered for it was shown by the vouchers to have obtained payment at various different rates, and as there appeared to be a wide disagreement in the testimony originally adduced concerning the number needed for a cubic yard of masonry, additional evidence was sought, such as would show the size used, and the number thereof required for a cubic yard of masonry. With Lieutenant Ogden's answers to the before mentioned interrogatories, he transmitted memoranda of Lieutenant Story, an officer of the Engineer Department, on duty while the work

was constructing, but who soon afterward died. These memoranda, on comparison, are found to correspond with the vouchers taken for the payment made to the contractor by the United States, and seem obviously to be the data wherefrom those vouchers were prepared. They exhibit, amongst other things, monthly details of the masonry executed, the numbers and different sizes of the bricks worked up in it, and the prices thereof, &c.; and Lieutenant Ogden has enumerated the several sizes therein specified, in his answer to the interrogatory in question, and declared that they were the sizes used, "and would average, when in masonry, about 570 to the cubic yard." This number, it may be seen, exceeds that assumed in the proposed award by more than 23 per cent., and the cost of the masonry work to the contractor must, it would seem, have been greater in nearly as large a proportion, inasmuch as upwards of seven-eighths of it would, apparently, have consisted of the cost of the labor of manufacturing and laying the bricks, and of the expense of removing them to the works; and as the estimate of these has been formed with reference to the numbers which might have been manufactured and laid by a workman of each kind, and his attendants, per day, and by a supposed rate of transportation *per thousand*. The expense for which the contractor would have had to be at for bricks is considered to be materially underrated in the proposed award, in another respect, namely, in there having been no allowance made for loss, waste, and breakage, other than for such as might have happened in the *process of manufacture*.

Mr. Swann, the former commissioner, appears by pages 70, 71, 72, and 73, of the beforementioned printed document No. 69, to have had prepared for him (by the Engineer Department, it is presumed) estimates of the probable cost of executing the earth work and masonry, supposing the materials to have been obtained by *purchase*, and the workmanship by hire. From the estimate as to the masonry, which has reference to bricks of a size different from any before alluded to, extracts will be here introduced. "Each brick of such dimensions would measure  $91\frac{1}{8}$  cubic inches, and 512 of them would *measure* a cubic yard, and *would, according to usage, be estimated as the quantity requisite for the cubic yard of masonry, the breakage and waste being considered equivalent to the space taken up by the mortar*. The number of bricks of the dimensions above stated, that would be contained in a cubic yard of masonry, would be 409." [The explanation of the process by which this result is arrived at is here omitted.] "To assume 512 bricks as the number requisite for a cubic yard of masonry, would be to allow for waste and breakage 103 bricks, or 25 per cent., which is the maximum allowance, and greater *perhaps* than would have been necessary in the case to which this estimate refers. Instead of 25 per cent. therefore, 10 per cent. will be adopted, which may be considered the *smallest allowance* for breakage, &c., that *could, under any circumstances, be made*. This estimate not only supposes the bricks to have been, as is already indicated, obtained by purchase, but it, as is evinced on its face, supposes them to have been *delivered* on Dauphin island. As to waste and breakage, therefore, it can have no reference to any happening either in the process of making the bricks, or in the transportation of them from the brick yards to the island. The yards of Messrs. Harris and Farrow were at the Red bluffs, situate twenty miles from Dauphin island, and the testimony of Colonel Gadsden shows that the bricks had, in the first instance, to be carted from the kilns to the water's edge, to be then placed

in flats and carried to vessels, and, after being conveyed in them across Mobile bay, had to be again put on board flats before they could be landed on the beach at Dauphin island, and from the beach they had, of course, to be removed to the site of the works. As, then, before the bricks could have reached their destination, every cargo would have had to undergo not only an often very hazardous voyage,\* but to be thrown from hand to hand at least eight different times, it would seem that if, in any case, the maximum allowance for loss, waste, and breakage, ought to prevail, this must be one requiring it; and, if so, it follows that the contractor would have had to incur the expense attendant on the manufacture and transportation of one-fourth more bricks than has been taken into account in the proposed award; independent of the nearly as many more which the difference between the size therein assumed, and the average of the sizes used, would have called for, as already manifested. The expense to which the contractors would have had to be at for bricks, is, besides conceived to be still further greatly underrated in the proposed award, owing to the smallness of the rate assumed as to the cost of their transportation, namely, \$2 50 cents per 1,000, and for fixing on which, the testimony of Colonel Russell taken in 1824, at the instance of Mr. Swann, [see page 69 of the beforementioned printed document No. 69,] is therein referred to. As a letter from Captain de Russey to the Engineer Department, dated on the 12th of May, 1821, contained a passage as follows: "The want of vessels as transports in this bay is sensibly felt; for that reason, an exorbitant price is expected for the transportation of materials. *Five or six dollars per thousand bricks is what is now paid* for a distance not exceeding twenty miles;" and as this appeared to be the distance the contractors' bricks had to be transported, further evidence as to the expense of their conveyance was deemed necessary, and to obtain which, the sixth interrogatory was adopted in these words: "What was the cost per thousand of transporting the bricks from the yards to Dauphin island, of removing them from the kilns to the vessels, of loading and unloading them, and of removing them from the landing at the island to the works? The answer of Major De Russey to this interrogatory is, "I have no knowledge of the cost of the transportation of bricks, &c. to Dauphin island. I was not, to my recollection, on the Gulf station when bricks and other materials were received on that island for the public fortifications." In his letter transmitting his answer to the interrogatories, Major De Russey has thus expressed himself: "You must be aware that, removed as I have been for many years from the Gulf station, and without notes or data to refresh my mind in relation to a work suspended by order of the President soon after my arrival at Mobile point, and which, of course, came under my supervision but for a short period, it is impossible to state positively the occurrences as they may have existed at the time I assumed the command of the Gulf station. I therefore beg leave to refer the commissioners to my correspondence with the Engineer

\* Attached to the beforementioned memoranda is a paper headed "a daily journal of casualties, losses by weather, &c. &c., and circumstances connected with the work, sustained by the contractor for Dauphin island fortification, commenced this 1st March, 1821." Under this head there are entries denoting that on the night of the 27th December, 1820, a loss of 12,000 bricks, and a negro man, valued at \$700, was sustained by the foundering of the sloop General Jackson; and that about the 10th February, 1821, the schooner Union and the sloop Brilliant ran on a shoal, and 16,000 more bricks were lost by throwing them overboard. These losses, it will be seen, happened within less than two months. The journal does not appear to have been continued, owing, it is presumed, to the suspension of the works.



Department in 1821 and 1822 and should any fact exposed in that correspondence be deemed worthy of notice, I would, if furnished with a copy thereof, certify to it." Colonel Gadsden's answer to the interrogatory is in these words : " I cannot say ; the arrangements for transportation were exclusively with the contractors ; it must have been high, however, as the bricks had first to be carted to the flats, removed from the flats to larger vessels at anchor in the bay, and put again on board of flats before they could be reloaded on the beach at the island." And Lieutenant Ogden's answer to it is, "*transportation of bricks cost from two to three dollars per thousand ; further, deponent knoweth not.*" That the cost here mentioned is merely that of the transportation in the larger vessels, distinct from the expense of conveying the bricks to and from those vessels, is manifested by his explanatory testimony, and is corroborated by vouchers with his accounts, which show that he actually paid the rates specified to Asa Whitehouse for transporting bricks from the Red bluffs to Mobile point in April and May, 1824, viz. at three dollars for 122,630, and at two dollars for 32,700, the difference in the rates being attributable, it is supposed, to a variation in the sizes. Captain De Russey, too, is shown, by vouchers with his accounts, to have paid at the same rates to Thomas W. Dailey. That the expense of removing the bricks to and from the vessels must have been great, the foregoing remarks relative to waste and breakage render it evident, and is further manifested by the beforementioned statement on oath lately forwarded by Mr. Fisher, wherein he has alleged that he "engaged himself as principal manager and director at the brick yard in making and burning the brick, and transporting them from Red bluffs to Dauphin island ; that he made four large brick yards, one of which contained more than three acres of ground, with all the houses, sheds, and fixtures necessary for such an undertaking, the labor and expense of which was very considerable ; that he continued making and burning brick during the spring and summer of 1820 and 1821, with all the hands, keeping six tables running, and properly attended, moulding about 40,000 bricks per day, and burning and transporting the same a distance of about 500 yards, in scow boats, to a point where steamboats and schooners could come to receive them, all of which was attended with a great deal of labor and work in the night, to suit the tide, which ebbs only once in twenty-four hours at that place." What distance the bricks had to be carted before they could be put on the scow boats, is not mentioned ; the cartage, however, it would be seen, could have been neither very short nor free from difficulty, as Lieutenant Story, who, under instructions from Captain De Russey, appears to have visited several places in Mobile bay, in search of stone suitable for foundations, has, in a report dated Dauphin Island, 25th May, 1821, observed, in relation to some found "at the Red bluffs, in the vicinity of the contractors' brick yards," that "*the banks here are very abrupt and precipitous, and are from sixty to eighty feet in height.*" Considering the number of laborers whose employment, under such circumstances, would have been needed at each end of the line, in so repeatedly moving the bricks by hand, the time each operation would have consumed, and the frequent loss of time in waiting for the tide, it is conceived that the expense of conveying the bricks from the kilns to the scows, therefrom to the vessels, delivering them on board, receiving the same from the vessels into scows at Dauphin island, putting them ashore, and removing them to the site of the works, might safely be estimated, including team and scow hire, at a rate equal, at least, to that of their transportation in the vessels.



Respecting the cost of mortar, too, the estimate in the proposed award is considered to be far too low. As to lime, one of its ingredients, the price is set down at twelve and a half cents per bushel—Colonel Gadsden having, in his deposition, expressed an opinion that, under judicious management, shell lime might have been manufactured for ten or not to exceed twelve and a half cents per bushel. In the Colonel's deposition, however, there is no indication that in the rates mentioned he designed to include the expense of transportation of it to the site of the works; according to an estimate made by him in 1820, the shell banks on Dauphin island were two miles therefrom, and the loading and transporting the shells would have cost about \$1 11 a cubic yard. Proposals for supplying bricks and lime were advertised for at Mobile, in 1822, and Captain De Russey, in a letter written to the Engineer Department soon after the proposals were received, stated that "lime at the kiln will be obtained at fifty cents per barrel;" and in a subsequent letter he represented that an arrangement for 4,000 barrels at that price, received at the kiln, had been entered into. With the accounts of the disbursing officers at Mobile, there are vouchers showing that 2,716 barrels were paid for at that price, and 619 barrels at 62½ cents; that the rate paid for the transportation of lime from the shell banks was 18¾ cents per barrel; and that, thereafter, shell lime was manufactured by the United States, and a compensation at the rate of 12½ cents per barrel, amounting to several thousand dollars, paid to L. De Vauberay for *superintending the making of it*. The contents of a barrel appear to have been about 2¾ bushels, and at 50 cents per barrel, therefore, without any addition for transportation, the bushel would be 18¾ cents; and Lieutenant Ogden's deposition, it will be seen, declares that it was valued at 20 cents. For the other ingredients, sand and water, the estimate in the proposed award makes no allowance, but, with regard to them, observes, that "the testimony of Colonel Gadsden, Majors De Russey and Fisher, all state they were under foot, and therefore its cost is nothing." Colonel Gadsden's answer is as follows: "Sand and water were both on the spot: the digging of the former, and a well to be sunk (not exceeding 15 feet) for the latter, was the only expense to be incurred. Whether my successor found on trial that the sand and water of the island would not answer, *and required them to be transported, I cannot say*:" and the answer of Major De Russey is in these words: "The water and sand were found upon the site of the work on Dauphin island." These answers do not appear to the Third Auditor to justify the conclusion that sand and water would have cost nothing, even if the contractor could have obtained both of them on the spot. The answer of Colonel Gadsden points expressly to the expense of digging the sand and of sinking a well; and the labor of drawing the water must have been attended with expense, of course. The expense of digging the sand when found near the place of work is shown by the analysis (see p. 113) to be equivalent, per cubic yard, to the cost of two relays of excavation of a like quantity of earth, or at the price fixed in the contract, one-fourth of 83⅘ cents. But, nowhere within the limits the fort and other works were to have occupied, could the contractor have been permitted to take sand for the purpose in question, without agreeing to supply its place, at his own expense, with corresponding quantities of earth to be taken from without those limits. The site appears to have required elevation; and the allowing the contractor to take sand therefrom, without obliging him to substitute for it other sand or earth free of charge,

would have subjected the United States to an expense to which they were not justly liable, equal to  $83\frac{8}{10}$  cents for every cubic yard so taken. *The testimony of Lieutenant Ogden expressly declares that the sand had to be brought in carts 500 yards; and the analysis of prices shows that where it had to be thus transported, an expense would have had to be incurred, in addition to that of digging it, as beforementioned, of more than double the amount thereof.* A cart with two horses and a driver, would, agreeably to the analysis, make 18 trips a day, a distance of 400 yards of slope, (the slope not exceeding one-twentieth of the base,) or 600 yards horizontal, and would transport each time one-quarter of a cubic yard of sand: thus, supposing the hire of the horses, cart, and driver to be three dollars a day, as assumed in the analysis, the transportation of a cubic yard of sand would have cost  $66\frac{2}{3}$  cents. Lieutenant Ogden's testimony shows that, to make a cubic yard of mortar, three quarters of a cubic yard of sand, and one-quarter of a cubic yard of water would have been needed, and that 0.16 of a cubic yard of mortar would have been required for a cubic yard of masonry; hence, for making a sufficiency of mortar for the quantity of masonry estimated for in the proposed award, there would have been wanted about 4,607 cubic yards of sand, and about 1,536 cubic yards of water. In the analysis the price of sand dug and transported as aforesaid, is set down at  $97\frac{8}{10}$  cents per cubic yard, and the price of a cubic yard of water is set down at  $65\frac{2}{10}$  cents. Supposing the contractor to have been able to supply himself with sand and water at an expense less by one-third than these rates, the cost of the quantities requisite for the masonry estimated for in the proposed award would have been about 3,668 dollars. The estimate therein of the cost of converting the lime, sand, and water into mortar, is, besides, considered to be far too low. The estimate of the cost of scaffolding and tools is at  $12\frac{1}{2}$  cents per cubic yard of masonry, or  $25\frac{1}{10}$  cents per 1,000 bricks, supposing 462.4 to the cubic yard; and, as a basis for it, the analysis of prices by the board of engineers (page 88) is referred to. The printed copy of the analysis is paged from 112 to 118; and in page 115, there appears to be an entry thus: "cost of tools and scaffolding, 0.1200;" but this forms part of an estimate of the cost of masonry of the thickness of a brick's length by the square yard, not of masonry by the cubic yard. In the same page, in an estimate applicable to the cubic yard, the entry is, "costs of scaffolding and utensils, 0.250;" and in the succeeding page there is an estimate applicable to "the cubic yard of masonry in brick for vaults," which is observed to include these items.

"For materials, handwork placing and lowering of the centres for 104 cubic yards of vaults, the expense calculated is of \$119,840, consequently for a cubic yard of 0.30 [1.30] it will be - 1.498

"Cost of scaffolds, utensils, and tools - - - 0.250"

This estimate is followed by another, applicable to masonry of vault of the thickness of a brick and a half length by the square yard, and wherein there is this statement:

"The price of a cubic yard is of \$12,990, (No. 17;) that of the square yard of a brick and a half will be the  $\frac{3}{8}$ , but the centres being nearly equal as to expense in the one and the other case, \$1,498 (No. 17) must be deducted from \$12,990, which will be \$11,492.

"Three-eighths of which will be - - - 4.3095

"And adding the costs of the centres - - - 1.498

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5.8075"

It seems, therefore, not only that the rate fixed on in the proposed award for scaffolds and tools is less by one-half than is required by the authority cited, but also that a far more heavy expense would have had to be incurred for centres, and for which there is no estimate. On this head the papers obtained from the claimants have been found to contain information as follows : One of them is an agreement entered into between Mr. Harris and D. H. Hemenway, in which it is stipulated that the latter should, at the rate of three dollars per thousand, lay all the bricks which the former was bound to lay on Dauphin island ; that Mr. Harris should find the bricks, and put them at a usual distance from the place where they were to be laid ; that he should also find lime, (sand being near, he was to have nothing to do with that,) scaffolding, and all the centres, &c., together with house room for the hands employed by said Hemenway, but not beds, bedding, or any other thing ; that the bricks were to be ten inches long, five broad, and three thick ; that if the size should be changed, said Hemenway was to lay as many cubic inches for three dollars as bricks of the size described contained ; and that he should be in readiness to commence by the 1st January, 1820. And another of them is the copy of an agreement entered into at the same time between Mr. Harris and David Doane, in which it was stipulated that Mr. Doane should make and put up the centres, scaffolds, &c. that might be required in erecting the fortifications on Dauphin island, and cover the walls, and pump the water out of the foundations for the walls, as might be required by the mason who was engaged to lay the bricks ; that he was to be paid for the work as above, *at the rate of two dollars for every thousand bricks* that might be laid ; and that if the size of them [the same as is described in Hemenway's agreement] should be altered to any other, he was to be paid in proportion to that size. A single purchase by the contractor of Northern pine boards "*intended for forming centreing for the arches of the fort,*" is shown to have cost \$3,657 30 ; thus evincing that, to that extent at least, an expense had to be incurred for boards for the centres, independent of the cost of the labor of making and placing them, and of the nails, &c. needed for their construction.

Pursuing the course already indicated, the conclusion arrived at in the proposed award is :

That the daily labor of a slave would have cost	-	56 <sup>2</sup> / <sub>10</sub>
That the daily cost of a mason, including attendants, would have been	- - - - -	3 15
That the cost of making, setting in the kiln, and burning bricks, including fuel and lumber, would have been per 1,000	- - - - -	2 73 <sup>7</sup> / <sub>10</sub>
That the transportation thereof to Dauphin island would have cost per 1,000	- - - - -	2 50
<hr/>		
Making the total cost of bricks delivered there	- -	\$5 23 <sup>7</sup> / <sub>10</sub>
That the cost of lime, and of the labor of making mortar for 1,000 bricks, would have been	- - -	73 <sup>36</sup> / <sub>100</sub>
That the scaffolding and tools for masonry of 1,000 bricks, supposing 462.4 to the cubic yard, would have cost	- -	25 <sup>95</sup> / <sub>100</sub>
That the laying of 1,000 bricks (estimating a mason to lay 1,198 per day) would have cost	- - - - -	2 62 <sup>9</sup> / <sub>0</sub>
And that the cost of labor of excavating one cubic yard of earth, including tools, plank, barrows, &c., would have been	- - - - -	34 <sup>37</sup> / <sub>100</sub>

And, hence, that the contractor might have derived a profit, per cubic yard—

On the masonry work, of - - - - - \$6 88  $\frac{49}{100}$

And on the excavation work, of - - - - - 48  $\frac{83}{100}$

And, in accordance therewith, an account is stated in the proposed award, wherein the United States are debited—

For 7,250 cubic yards of earth, at	83 $\frac{8}{100}$	\$ 6,075 00
1,446.5 do masonry, at \$ 11 00		15,911 50
	carpentry	661 95
218,284.05 do earth	48 $\frac{83}{100}$	106,588 10
36,946.9455 do masonry	6 88 $\frac{49}{100}$	254,376 02
Award on wood and other work	- - - - -	8,000 00
Damages for detention	- - - - -	4,000 00
		<hr/> 395,613 07

And are credited with the advances and payments made to or on account of the contractor, amounting to \$257,449 15

Deducting the payment, made to them for materials delivered, amounting to \$31,252 94

And the sum paid under a decision of the Secretary of War, for detention and loss of slaves

10,200 00	
<hr/>	
41,452 94	
	<hr/> 215,996 21

Thus exhibiting, as due to the contractor, a balance of \$ 179,616 86

Respecting the deduction of \$31,252 94, it is to be observed that the materials for which this amount was paid, appear to have been as follows:

2,426,087 bricks, invoiced at 6 different prices, namely, \$9 69, \$9 84, \$10, \$10 30, \$10 75, and \$16 75 per 1,000, and amounting altogether to

- - - - -	\$25,999 38
36 casks lime - - - - -	144 00
166,241 feet of boards - - - - -	3,657 30
6,622 feet of timber - - - - -	1,191 96
1,058 lbs. of nails - - - - -	93 58
1,762 do iron, \$105 72, and smithery, \$61 -	166 72

\$31,252 94

Of the bricks, 630,475 are shown to have been worked up in the 1,446 cubic yards of masonry, for which an allowance is made in the account, at the full contract price of \$11 per cubic yard, and to the extent of the invoice prices; therefore, of that number, being \$7,838 66, the deduction would clearly operate as a *double credit*; and, as regards the residue of the bricks, it appears obvious to the Third Auditor that the deduction ought to be regulated by the same rate, as, in the computation of the contractor's profits on the masonry work, the cost of bricks shall be estimated at. For that work, including all materials, he was, under the contract, to be paid \$11 per cubic yard, and no more. Had he gone on with the fort and worked up the 1,795,612 bricks not used in the 1,446 cubic yards of masonry, the invoice prices thereof, amounting to \$18,161 72, would have been deducted from the contract price of \$11 per cubic yard. In arriving



at the supposed profit that price might have yielded, viz. \$6 88<sup>40</sup>/<sub>100</sub> per cubic yard, the cost of bricks has been set down in the proposed award at \$5 23<sup>7</sup>/<sub>10</sub> per 1,000, and at which, the cost of 462, the number therein fixed on for a cubic yard, would be about - - - - - \$2 42

The average of the invoice prices of 1,795,612 bricks, not used as aforesaid, is a trifle more than \$10 11 per 1,000, and at which, the price of 462 would be - - - - - 4 67

Leaving an excess of profit beyond what the contractor was entitled to, of - - - - - \$2 25

per cubic yard, on as much masonry as 1,795,612 bricks would have sufficed to construct. This, at 462 bricks to the cubic yard, would have been 3,886 cubic yards, and the excess would amount to \$8,743 50. General Starke, as has been already mentioned, proceeded with the work for a short time after the contract was abandoned by the United States, and he appears to have used 272,225 of the bricks; and Lieutenant Ogden, in a report dated at Dauphin island, November 1, 1821, has accounted for 40,000 more, under the head of casualties—"gale 16th September, 1821;" and has, in the column of remarks opposite the number entered as on hand, being 1,484,887, inserted a note as follows: "<sup>1</sup>/<sub>4</sub>th broken (estimate.)" All losses by casualties, breakage, &c. would have had to be borne by the contractor himself, and it seems that an allowance on this account ought to be made out of the deduction, even if made at the rate suggested by the Third Auditor. Respecting other of the materials for which payment was made in the aforesaid amount of \$31,252 94, the memoranda kept by Lieutenant Story, and which Lieutenant Ogden transmitted along with his answers to the interrogatories, represents as follows: "At the close of the month of February, 1821, it was deemed advisable to take an account of such materials as had been paid for by the United States to the contractors in the earlier stages of the contract, and had been subject to loss, waste, decay, use, or injury, and the following results were obtained: Richard Harris had been paid for, previous to January 1, 1820, 36 casks stone lime, amounting to \$144. What had not been destroyed by time or exposure, had been appropriated to his private uses at Dauphin island and the Red bluffs. He had been paid for 886 lbs. of nails, amounting to \$75 31; of these, 130 lbs., amounting to \$11 05, were used for the benefit of the United States, in the plank foundations for the barracks, and 30 lbs. for other uses. The remaining 726 lbs., costing \$61 71, were either used in the contractors' service, or otherwise lost; 591 lbs. was the quantity received by General Starke, September 15, 1820. He had been paid for 166,241 feet, reduced measure, of Northern pine boards, plank, and scantling, which cost \$3,657, originally intended for forming centring for the arches of the fort. On measurement at the close of February, there were found to be on hand, by Mr. R. Salmond, inspector of materials, &c., 77,071 feet, reduced measure, costing \$1,695 56, leaving to be accounted for, 89,170 feet, costing \$1,961 44. Of this, had been expended by direction of the officers of engineers, at various times and for different public purposes, 5,315 feet, amounting to \$ , as per account of Mr. Salmonds. The quantity expended on the barrack foundations was estimated by the superintending engineer at 27,112, costing \$596 46. The account rendered by David Doane, master carpenter, of lumber used for the contractors' purposes, at various times, is :



For house and out-buildings now occupied by General Starke, feet	6,000
bakehouse, 1,000, carpenter's shop, 5,064	- - - 6,064
repairs of Harris's house*	- - - 775
cook house for negroes	- - - 3,886
sent to Red bluffs (for repairs of steamboat, &c.)	- - - 2,850
scows, making and repairing	- - - 2,640
bartered with Lieutenant Dumeste, in exchange for seasoned	
timber	- - - 2,500
sheds and covering	- - - 3,000
sundry purposes	- - - 2,285
And he estimates the foundation plank at	- - - 30,000
The plank for sashes of quarters at	- - - 700
	<hr/>
Amounting to	- - - 60,700
Which, with the number of feet used by the Engineer Department	5,313
	<hr/>
Amounting in all to	- - - 66,013

will leave a deficit to be accounted for, of 23,157, and adding 2,888 for the difference in the head carpenter's statement, and the calculation of the engineer officer in the plank foundations of barracks, amounts to a total deficit of 25,045."

To this deficit, or to any quantities used in the erection of dwelling-houses, shops, and other buildings, &c. for the accommodation of the contractors or their workmen, the deduction cannot, with propriety, in the opinion of the Third Auditor, be made to extend. Had the contractors gone on with the work to completion, they could have received no other remuneration for the cost of those houses, &c., than the profits derivable from the execution of it at the contract prices might have afforded; and *the expenses taken into view in the proposed award, in forming an estimate of such profits, do not comprise any in respect of that cost.* The only portions of the 166,241 ft. of boards, plank, and scantling, to which the deduction ought to apply, as the Third Auditor conceives, are the 5,315 ft. used by the Engineer Department, the 77,071 ft. expressed to have been on hand, and, unless measured and allowed for in the 1,446 cubic yards of executed masonry, the 27,112 ft. expended in the foundations thereof. Of the 6,622 cubic ft. of timber, the price of which is included in the aforesaid \$31,252 94, no part is shown by Lieutenant Ogden's beforementioned report to have been either left on hand or used in the work. The memoranda of Lieutenant Story, after representing that the President's decision for suspending the prosecution of the works was received about the 20th April, 1821, and that a few days more labor was applied to them in order to bring the whole to a level, proceed thus: "Such materials and work as had been furnished or performed by the contractor, under full faith of their being immediately wanted and paid for, were received and paid for in the settlement for the month;" and in the enumeration of these materials, he has included "2,697 cubic feet of timber for blindage, at 18 cents per foot, amounting to \$485 46." The remaining 3,295 cubic feet appear to have been paid for in the settlements for the preceding months of January and February,

\* This house had to be built before it could have been repaired, and to an omission to estimate for it, a considerable proportion of the deficit may be ascribable.

1821, and may probably have been furnished for a like purpose. The meaning of the term blindage is not understood by the Third Auditor, nor does he understand whether the expense of procuring timber for such a purpose would have been payable by the United States, under the contract, in addition to the price of the masonry work, or would have had to be borne by the contractor as incidental to the execution thereof. If the latter, the price of the timber ought to be excluded from the deduction, for the reason indicated in the foregoing observations as to the boards.

In the proposed deduction of the \$10,200 paid for lost slaves, the Third Auditor cannot concur. The payment appears to have been made pursuant to a decision of the acting Secretary of War, in consequence of a report by the Committee of Claims of the House of Representatives, not acted on by the House, containing resolutions as follows :

“*Resolved*, That Nimrod Farrow or his assigns are entitled to receive, under the fourth section of the act of Congress passed the 3d March, 1825, entitled ‘An act for the relief of Nimrod Farrow and Richard Harris,’ the sum of \$10,200, being the value of seventeen slaves, part of those conveyed by Nimrod Farrow and Richard Harris to James Gadsden, for the benefit of the United States, and *lost while they were detained by the officers of the United States under that conveyance.*”

“*Resolved*, That the foregoing report and resolution be communicated to the Secretary of War.”

For conclusive evidence that *no loss of slaves* could have been sustained by the contractors, by reason of any detention thereof by the officers of the Government, under the conveyance referred to, the Third Auditor refers to the depositions of Captain Gadsden, Captain De Russey, Lieutenant Ogden, and Jack F. Ross, in the printed document No. 104, 1st session 19th Congress, pages 25, 26, 28, 29, 31, 32, 39, and 40, whereby it may be seen not only that the main object for which the conveyance was executed was to enable the contractors to hold possession or enjoy the use of property purchased with funds advanced by the United States, and to prevent the same from being taken under executions for the private debts of the contractors, with which it was daily threatened, but also that, in fact, no officers of the Government ever detained, *from the contractors or their agent*, any of the slaves, nor ever had the actual possession of any of them prior to 1825, when Captain De Russey appears to have hired from the administrator of General Starke, their agent, and part if not sole owner of them, the brick yard at the Red bluffs, and the slaves, mules, oxen, &c., for a year, at the rent of \$22,500. The witness, Jack F. Ross, was the administrator, and his testimony proves that, from the date of the conveyance (10th April, 1820) up to 1825, General Starke and his legal representatives had the possession and control of the slaves, and exercised ownership over them. And in the beforementioned memoranda there is found to be a note, appended to the description of the work executed by General Starke at Dauphin island in the month of July, 1821, as follows :

“*Mem.*—General Starke, agent for the contractors, having been officially informed, on the 9th instant, that the sum of \$10,000 would not be appropriated for the completion of the barracks, discharged his masons, and *withdrew his forces to the Red bluffs.*”

This affords additional evidence that there was no detention of the slaves from the contractors or their agent, by any of the officers of Government. Exclusive of other letters in relation to the same transaction, the only

testimony appearing to have been adduced to show any detention of the slaves, or the exercise of any control over them, by an officer of the Government, under the conveyance, is an extract from a letter of Captain De Russey to the Engineer Department, wherein he, after alluding to the mortgage made, by the contractors, of the slaves they bought in New Orleans, and representing Mr. Coxe to have purchased the mortgage, in hopes of obtaining possession of them, says: "With this expectation, he has demanded them of General Starke, who is the acknowledged agent of Harris and Farrow, and who, of course, has charge of them. They have been refused, *by my directions*, and I am pleased to find, by the answers received from Mr. Crawford, that Mr. Coxe's success is by him considered very doubtful." The directions thus given were in accordance with the principal object of the conveyance, and, instead of having a tendency to show the contractors to have sustained a loss of slaves by detention under it, this testimony evinces that, in consequence of those directions, the contractors were enabled to hold possession of between thirty and forty slaves, of which they might otherwise have been deprived. Under circumstances like these, the Third Auditor cannot see how, consistently with the principles on which the claims are directed to be adjusted, the deduction can with propriety be made. The only reason assigned for it, in the proposed award, is that the transaction was not dependent on the contract. The Third Auditor is unable to distinguish any material respect in which, on principle, it differs from that of the payment awarded by Mr. Swann. But for the contract, the one payment would not have been made any more than the other.

Relative to the allowance of \$8,000, under the head, "Award on wood and other work," and which, in a previous part of the proposed award, is expressed to be for "profits on wood and other work not included in the above, as per award of Mr. Swann," the latter award contains as follows: "The commissioner was at some loss to make an estimate of the injury which the contractors sustained by the sudden and unexpected abandonment of the works on the part of the Government. He was satisfied that some portions of the work were in such a state, at the time of the abandonment, as not to admit of their being received and accounted for by the Government; such as bricks upon the yards, and timber and other materials in an unfinished state. It has been proved, by some of the witnesses, that there were upwards of two millions of bricks moulded and upon the yards at this period, and that they were lost in consequence of the abandonment of the works. The commissioner has not felt himself satisfied that a loss to this extent did take place, but, if it did, much of it must have arisen from great negligence on the part of the contractors or their agents. The commissioner, however, has deemed it just to award some compensation for this loss, as also for so much of the timber and other materials as were in progress at this time. The commissioner has fixed on \$8,000 as a compensation for these losses." He had previously, in his award, (see page 96, Doc. No. 69,) made a deduction, in favor of the contractors, of \$48,899 15, as the amount for which they had *furnished work and materials* at the time the fort was abandoned. The data on which this deduction appears to have been predicated is an extract from a table accompanying a report of the Chief Engineer to the Secretary of War, which is printed in page 21 of the above mentioned document, and contains an entry as follows: "Value of materials delivered and work executed by

the contractors, \$48,899 15." Information of this general character is obviously all that he had been furnished with on the subject, because no correct description of the particulars could have produced such an amount; the whole of the work executed and materials delivered, exclusive of those used in the work, and the prices whereof were deducted by the engineers in the monthly settlements for it, having amounted altogether to but \$45,466 69. Hence the Third Auditor conceives that Mr. Swann understood the \$48,899 15, deducted by him, to have been wholly for the executed work, and the materials used therein, and that he considered timber and other materials, in addition to those so used, to have been left on hand and in progress when the work was abandoned, and therefore made a separate allowance for them, and for bricks in an unfinished state upon the yards. The memoranda of Lieutenant Story, and report of Lieutenant Ogden, before noticed, in connexion with the vouchers for the payments to the contractors, render it evident to the Third Auditor that no timber or other materials were furnished by them at Dauphin island, and left there at the time the United States abandoned the work, exclusive of those for which they received payment. The part of the memoranda, before cited, relative to the work and materials received and paid for in the settlement for April, 1821, the month in which the United States abandoned the contract, clearly evinces that in that settlement it was intended to include all the work and materials, of every description, which had been furnished, and had not been before paid for; and it was therein that allowances were made for all the carpentry and smithery work, at the contract prices, and for the iron, &c. In respect, therefore, of timber or other materials left on hand at Dauphin island, the Third Auditor can concur in no allowance in addition to that by way of deduction of part of the item of \$31,252 94, previously noticed. As respects unfinished bricks, it appears that G. Fisher has, in his deposition, (page 76, Doc. 69,) declared that, "at the period of the suspension, there remained on the brick yards between two and three millions of moulded bricks, which were worth in that state four dollars per thousand, all of which were destroyed by the storm in September, 1821, which loss would have been avoided but for the suspension of the contract." This testimony did not satisfy Mr. Swann, as his award indicates, that a loss to that extent was sustained, nor does it satisfy the Third Auditor. Between two and three millions of bricks would seem to be as many, judging from performances, as the contractors were able to make and deliver in a year. The entire number made and delivered between April, 1820, when the yards are alleged to have been generally finished, and the time of the abandonment, in April, 1821, a period of a full year, and during which General Starke is declared to have had the sole control, with a force of two hundred negroes, besides other assistants, in his employ, is shown to have been less than two and a half millions. Seeing this, and also that, according to Colonel Russell's deposition, (page 68, Doc. 69,) the brick-making season did not commence till within about twenty days before the reception (which the memoranda before mentioned show to have been about the 20th April) of the President's decision for suspending the prosecution of the works, it seems to the Third Auditor to have been out of the bounds of possibility that between two and three millions of moulded bricks could have been upon the yards at that time. And seeing, besides, that General Starke, a few days only after the suspension, (vide printed document in Colonel Russell's case, No. 62, 2d session 18th



Congress, page 76,) entered into a contract for the making and delivery, by the 1st November following, of a million of bricks for Colonel Russell; and, further, that in a deposition of General Starke himself, (page 75, same document,) it is declared that he "continued to deliver materials, construct works, and *make bricks*, until the 23d November, 1821," the Third Auditor is not satisfied that the bricks which may have been moulded and upon the yards at the time of the suspension in April, 1821, were suffered to remain thereon in that state for several months, so as to be destroyed by the gale of September. In the allowance of any part, therefore, of the \$8,000, he cannot concur. At the rate arrived at, in the proposed award, of the cost of moulded bricks to the contractors, that sum would pay for 5,693,950.

The allowance of \$4,000 made in the proposed award for detention at the commencement of the work, as awarded by Mr. Swann, is all that now remains to be noticed. In relation thereto, Mr. Swann's award contains as follows: "In consequence of the failure of the agent of the Government to designate the spot on which the fortification was to be erected, it appears that about seventy-five laborers and mechanics, sent by the contractors to Dauphin island, and landed there on the 22d November, 1818, remained there in a state of idleness from that time until the 22d of January following; and that it was not till this last period that the site of the fortification was designated. It has seemed to the commissioner that it would be just and reasonable that a compensation should be made to the contractors for this loss of their labor; and he has estimated the value of this labor at the contract price, from the 1st December, the time fixed for the commencement of the work, until the 22d of January following; and he has decided to allow for it the sum of \$4,000." Mr. Swann was not aware of the fact which the letters of the superintending engineer, of the 19th September and 4th October, 1819, extracts whereof are previously set forth, and the answer of Colonel Gadsden to the thirteenth interrogatory, render manifest; that no labor could be advantageously prosecuted at Dauphin island before the materials necessary for the construction of the fort were collected. Of these, the bricks were the most essential, and they had to be made, not on Dauphin island, but at a place in no wise depending on the precise location of the fort thereon, and the preparatory arrangements for making them, therefore, could not have been retarded by any delay in laying it out. Before those arrangements could be commenced, the place had to be selected and purchased by the contractor, who, as the testimony evinces, did not himself arrive till January, 1819, the month at about the middle of which the fort appears to have been laid out; and not a brick was delivered on Dauphin island till nearly a year and a quarter thereafter. Some excavation work was executed, and the letters referred to explain the motives which influenced the engineer in allowing the contractor to do that, on what condition it was done, and the reason for discontinuing it. That it proved unavailable at the time the masonry work was commenced, is evinced by the trenches for the foundations for it having to be then excavated, as appears in the memoranda, and in the vouchers for the payments to the contractor. The masonry was not begun till the 23d of January, 1821, more than two years after the day on or before which the contractor stipulated "that the construction of the said fort shall be commenced." If the laying it out, therefore, had been deferred by the engineer for a year or more, instead of a few weeks, he would still have



been abundantly in time for the contractor. In his last mentioned answer, Colonel Gadsden has expressly declared that "all the expenses incurred, or damages sustained, were the result of the blunderings alone of men who had undertaken what they were incapable of performing;" and its conclusion is as follows: "Even after my arrival, I had no official duty to perform, but more than twelve months of my time was consumed in instructing the contractors how to organize their own operations." Exclusive of Colonel Gadsden, whose duties were not confined wholly to Dauphin island, the United States had there an inspector at a compensation of six dollars per day, and an assistant engineer at a compensation, over and above his ordinary pay and emoluments, of one dollar and fifty cents per day; and it seems to the Third Auditor, that, on the principles of justice and equity, the United States are, under circumstances such as have been described, better entitled to a reimbursement of the expense they were, by the neglect or mismanagement of the contractors, uselessly put to for the compensation of officers, than the claimants are to any allowance in respect of delay in laying out the fort; and hence he cannot concur in such an allowance. Viewing the item in this light, he passes over other objections to which he deems it, and the remarks in the statement of the claimants respecting it, to be liable, merely observing that the books of the contractors appear to him to afford strong presumptive testimony that the force which reached Dauphin island in 1818, was considerably short of seventy-five men; and, as to their having been mostly purchased German redemptioners, as supposed by the claimants, that no German redemptioners are shown to have been purchased before the fall of 1819.

In forming an estimate as to the profits which the contractors might have gained in case they had been allowed to finish the 30,000 cubic yards of masonry, and 100,000 cubic yards of excavation, which the United States were, by the contract, bound to prescribe, it appeared to the Third Auditor that calculations, with reference to the length of time needed for the performance of the work by the force the contractors are alleged to have had at their command, and to the probable expenses of their establishment during that time, would produce a much plainer, if not more correct view of the subject, than the mode adopted in the proposed award presents; and, having so made his calculations, the Third Auditor will now proceed to describe the data on which they rest, and to exhibit the result.

A cubic yard of masonry would, according to Lieutenant Ogden's answer to the seventh interrogatory, require, on an average of the sizes actually used, 570 bricks, when in masonry, and at this rate, there would, for 30,000 cubical yards, have been wanted of bricks sufficiently perfect to be worked up,

17,100,000	17,100,000
Add thereto, for losses, waste, and breakage, (see foregoing remarks on this head,) at 25 per cent.	4,275,000

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21,375,000

and it will be seen that, for the construction of 30,000 cubic yards of masonry, there would have had to be manufactured more than twenty-one millions of bricks.

Agreeably to an estimate obtained from Mr. Leckie, of this city, 2,000 bricks are set down in the proposed award as the number which might be made daily by a gang of five hands, consisting of one moulder, one temperer, one wheeler, and two off-bearers; and after making an allowance for Sundays, bad weather, &c., the number of working days in a year is set

down at 250: [20 days to the calendar month, or 240 days to the year, are understood to be commonly estimated.] The brickmaking season appears to have continued but six months, viz. from the 1st of April to the 30th September; and taking 125 as the number of working days therein, the work of a gang of five hands, at 2,000 bricks a day, would produce only 250,000 bricks in a year. The estimate of Mr. Leckie, however, was doubtless formed with reference to what such a force might accomplish in or near the city of Washington, and not to what it might be able to do in a climate like that in which the brick yards of the contractors were situate, where, it would seem, from the deposition of Colonel Russell, (see page 68, document 69,) that 100,000 bricks were as many as a brickmaker could make in a whole season, a number less by three-fifths than that to which Mr. Leckie's estimate leads. A further manifestation, too, of the inapplicability of that estimate to the labor performable at the yards of the contractor, is deemed to be afforded by the result of a full year's operations after General Starke became concerned, and during which he is alleged to have had 200 negroes in his employ, besides other assistants. On the delivery of materials, the contractors were entitled to advances in money according to the cost or estimated value thereof; and it is inferrible, therefore, that the utmost exertions were used in the manufacture of bricks, and yet, within that year, and although, before the commencement thereof, the yards are alleged to have been generally finished, the whole number made and delivered is shown to have been less than two and a half millions; whence it would seem that two and a half millions were as many as could be made at their yards, and delivered in a year. At a subsequent period, the administrator of General Starke appears to have manufactured and supplied bricks for the works at Mobile point, and during this period the quantities furnished were, according to the vouchers, as follows, viz. In the third and fourth quarters of 1823, 1,098,223; in the entire year 1824, 2,219,789; and in the first and second quarters of 1825, 1,068,211, and which tend still further to show that two and a half millions were fully as many as could be made and delivered in a year. Mr. Fisher, however, in the statement on oath lately transmitted by him, and an extract from which is previously set forth, has, it will be seen, after testifying that he was the principal manager and director at the brick yard, and continued making and burning brick during the spring and summer of 1820 and 1821, *with all the hands*, declared that the number of bricks moulded in a day was about 40,000. At this rate, after deducting one-seventh for waste from various causes, as in the estimate adopted in the proposed award, the number produced in a season, supposing it to have included as many as 125 days favorable to the prosecution of the business, would be less than 4,300,000. But, even if it be supposed that the contractors had the ability to make five millions in a year, it would have required more than three and three-quarters years to supply the remainder of the bricks; and Lieutenant Ogden's answer to the eighth interrogatory renders it evident that their making and delivering still more than five millions, if in their power, would have availed them in no very material degree; in that answer it will be seen he has designated the number of masons that might have been *advantageously* employed and kept in employment at Dauphin island at twenty, and the number of bricks which, on an average, each mason might have laid in a day, at *one thousand*; the portion of the 30,000 cubic yards of masonry work (28,553½ cubic yards) unexecuted at the time the con-

tract was abandoned by the United States, would have required, at 570 to the cubic yard, the laying of 16,275,495 bricks; and the laying of this number, reckoning the working days in a year at 250, and the twenty masons to lay 20,000 per day, would occupy more than three and a quarter years.\* Hence it would seem that the contractors must have had to sustain at least three and a quarter years' expenses of their establishment. The force in their employ, as before indicated, is alleged to have consisted of 200 negroes, besides other assistants; and to show that the application of as large a force would have been requisite to complete, within three and a quarter years, the residue of the work the United States were bound to prescribe, is the next object in view. The estimate in the proposed award, as to the masonry, takes one master workman, six superior masons, and twenty-one laborers, and assumes that six of the laborers might have been employed as followers of the six leading masons. The testimony of Lieutenant Ogden shows that as many as twenty masons might have been advantageously employed, and that the allowance of attendants was at the rate of three to every two masons. On the plan then adopted in the proposed award, of considering half the twenty masons of the superior class, and the other half negroes, the portion of the negro force of the contractors, which would have had to be employed three and a quarter years in the execution of the masonry, would have been *forty*. Keeping in mind the result of a year's operations at the contractors' brick yards, the testimony of Colonel Russell, wherein the number of bricks a brickmaker could make in a season is set down at 100,000, and the testimony of Mr. Fisher, the principal manager and director at the yards, which shows that during the period when the *entire force was applied to the object*, no more than about 40,000 were moulded in a day, (a rate, which, without any deduction therefrom for waste, would produce but five millions in a season,) the Third Auditor does not, as he has previously intimated, consider that in the climate where those yards were situate, a gang of five hands would have been able, agreeably to the estimate of Mr. Leckie, to make 250,000 in a season, or a number at all approximating thereto.

But supposing, for the present purpose, that a gang of five hands could, in that climate, have made as many as 250,000 in a season, it would (allowing in conformity with Mr. Leckie's estimate, an extra hand of each sort for every six gangs) have required the work of about 117 hands to manufacture in that time five millions of bricks.†

During one half of each year, therefore, this portion of the force would, on that supposition, have had to be appropriated to the making of bricks;

\* The number of bricks which each mason might have laid per day, has been estimated in the proposed award at 1,198; it appearing, by the testimony of Captain Delafield, in connexion with the report to which it refers, that taking the masons one with another, and the whole period they were employed, the number laid daily by each, in the work he superintended, was 1,198; as these, however, were hired bricklayers, who, it is to be presumed, were regularly brought up to the business, and rendered expert by practice, the result of their labor would seem to be no just criterion in an estimate like that which assumes only one-half the masons to be of that description, and the other half to be taken from amongst the slaves of the contractor.

† On the supposition that a gang would, in a season, have been able to make 175,000 bricks, (the medium between the 100,000 set down in Colonel Russell's deposition, and the 250,000 estimated by Mr. Leckie,) the number of hands required to make 5,000,000 in a season would (allowing as above) have been about 167. The extreme number a brickmaker was supposed by Mr. Swann to have been capable of making in a season, appears, by the notes to his award, to have been but 150,000.

and to show that the services thereof, during the remaining half of each year, would have been needed to finish the excavation work, supposing that this work could all have been effectively prosecuted in the winter season, is the next object. Of the 100,000 cubic yards of that work which the United States were bound to prescribe, there remained about 91,189 cubic yards unexecuted at the time the contract was abandoned on their part. According to the testimony of Lieutenant Ogden, it would require on an average, 8 negroes to excavate and remove, in the manner intended by the contract, 15 cubic yards of earth in a day; and, at this rate, the labor of 117 negroes would have effected the excavation and removal in 125 days of only 27,422 cubic yards; and in  $3\frac{1}{4}$  times that period, but 89,121 $\frac{1}{2}$  cubic yards, being less, by 2,067 $\frac{1}{2}$  cubic yards, than the unfinished portion before mentioned. Thus, it appears that the masonry, brickmaking, and excavation work alone would have called for more than  $3\frac{1}{4}$  years' labor of, say 157 of the 200 negroes alleged to have been in the contractors' employ; leaving only 43 whose services (supposing the whole two hundred to have been effective) could have been applied to the various other work that would necessarily have had to be performed in complying with the contract, such as the collecting of shells and manufacturing them into lime, excavating sand, removing it (say 500 yards, see Lieutenant Ogden's testimony) to the site of the works, drawing water, and converting these materials into mortar, cutting wood\* for burning the bricks and lime, and for fuel at the quarters of the whole laboring force, placing the bricks and shells in the kilns, and attending to the burning thereof, &c. &c.

That all this would have furnished sufficient employment to occupy the time of 43 hands, there can, it is conceived, be no reasonable doubt; and if otherwise, it seems obvious that the contractors, supposing their negro force to have consisted of 200, could not, after deducting therefrom the 157 allotted for the masonry, brickmaking, and excavation work, have had near as many as 43 operatives left; the papers afford a description but of about two-fifths of the two hundred, and in this minor portion there appears to have been 16 women and three small children. Assuming, then, the negro force of the contractors to have consisted of 200, and the services of the whole, for  $3\frac{1}{4}$  years, to have been needed, the Third Auditor will next proceed to present his estimate of the probable expenses they would have had to be at in respect of that force, and otherwise, in order to complete the unexecuted portions of the masonry and excavation work which the United States were, by the contract, bound to prescribe: first observing that, independent of the reasons assigned in a previous part of these remarks, in opposition to the taking of interest on the average cost of slaves, and insurance on the amount of that cost, as data in computing the cost of their labor to the contractors, there are others, arising from the lowness of the assumed rates of cost and insurance, and a strong doubt of the practicability of effecting the latter at all. As to the cost, the rate

\*That 12,000 cords were considered necessary at the Red bluffs alone, appears by a contract with Mr. Fisher for the cutting, cording, and delivery there of that quantity; and that it was considered a day's work of a man to cut and cord one cord of wood, is manifested by several other contracts, in which there are stipulations for a deduction from the wages in case each cut less than one cord a day. At one cord a day per man, it would have required (reckoning 250 days as a year)  $3\frac{1}{4}$  years' labor of 15 men to cut and cord 12,000 cords. How much more would have been needed at Dauphin island for burning the lime, and for  $3\frac{1}{4}$  years' fuel for the laboring force there, there are no means for forming an estimate.



fixed on is \$600 each. The 39, purchased by Mr. Farrow at New Orleans, cost \$26,850 ; amongst them there were 10 *women* and 3 *children*, aged, respectively, 2, 3, and 8 years ; and one of the males, and one of the women, are shown to have been excepted out of the warranties in the bills of sale, as not free from the maladies provided against by law. The average price of these 39, of which, as before indicated, two were subject to infirmities, and a full third consisted of women and children, will be found to have exceeded \$688 each ; and the expenses of the journey to and from New Orleans, and of transporting and subsisting the slaves from New Orleans to Dauphin island, doubtless increased their cost to at least \$700 each. The contractors appear to have, at another period, sent to New Orleans for laborers, and to have, in an agreement with a sub-contractor, engaged to let him take any number of them, and to charge him only the actual expense ; and their books show, that for the passages, &c. of 54 men from New Orleans, he was charged at the rate of \$14 28 each. Considering, then, the description of the slaves, and the improbability that Mr. Farrow would have made the purchases in New Orleans, if he could have bought on cheaper terms in the vicinity of Dauphin island, \$700 each would seem to be a low average rate at which to estimate the cost of efficient slaves at the latter place. The insurance is estimated at only five per cent. per annum on the assumed cost of slaves at \$600 each ; and that any institution could have been found whereat the contractors could have effected an insurance against all risks on slaves who were to be employed in the section of country in which their force was to have served, at a premium of even double that rate, is deemed by the Third Auditor to be not within the bounds of probability. That the risks of loss by death, sickness, &c. to which the owners of slaves working there were exposed, must have been very great, he considers to be manifested by the high wages obtainable for their services. But for such risks it would have been impossible, he conceives, to hire out slaves at a rate which would have repaid their cost at even \$700 each, with interest thereon, in less than 3½ years.

In making his estimate, the Third Auditor will take

### 1. *Wages of negro men.*

The lowest rate mentioned in any of the testimony (with the exception of Major De Russey's, and which applies to a later period) is \$20 per month. That seven were actually hired by the contractors to the end of the year 1821, at \$25 per month each, is shown by their agreement with Mr. Weekes ; and that Mr. Fisher, for fifty-five others furnished by him, has charged monthly wages at the following rates, viz. for three blacksmiths, at \$40 each ; for two carpenters and one wheelwright, at \$35 each ; for four wagoners, at \$25 each ; and for the remaining forty-five, at \$20 each, is shown by his beforementioned statement on oath.

An estimate, therefore, for the whole force, at only \$20 per month each, may be regarded as a very low one, and at which the hire of two hundred negroes, for 3½ years, would amount to - - - \$156,000

### 2. *Subsistence, clothing, and taxes.*

Under these heads Lieut. Ogden, with reference to the negroes employed at Mobile point, has testified, that the subsistence



cost from \$3 50 to \$3 75 per month, and the clothing about \$1 50. The taxes on a negro he has estimated at 87½ cents per annum. Averaging the subsistence, and assuming the other rates, the amount for a year would be \$62 37½

Captain Delafield, in his deposition, has set down the expense per man of subsisting laborers, making no distinction between negroes and white men, at eighteen cents per day, and the expense of clothing negroes at \$24 per annum each. A year's expense of a negro, agreeably to this testimony, would be—

Subsistence,	-	-	-	-	\$65 70
Clothing,	-	-	-	-	24 00
Add taxes,	-	-	-	-	87½

90 57½

Mr. Love, the agent of Colonel Russell, in the deposition made by him in the case of the latter, (see report No. 149, 1 sess. 19 Cong. p. 41,) has estimated *at current prices* the cost of provisions, transportation, and clothing, of one hundred negroes from April to October, 1821, inclusive, 7 months, at \$6,000. At this rate, the expense for a year for one hundred negroes would amount to \$10,285 71

Add taxes, - - - 87 50

\$10,373 21

And for one, to - - - 103 73

Edward Clark, who was in the employ of the contractors, and whose testimony has been relied on in the proposed award, has, in his deposition, put down the *finding* slaves at \$1 per week each. In the term *finding*, he is not presumed to have included clothing, but merely subsistence. He is shown, by the books of the contractors, to have been charged for the board of negroes at fifty cents a day each, and it is hardly supposable that he would either have been, or submitted to be charged, at \$3 50 per week for boarding alone, if \$1 a week had been sufficient to cover the expense of feeding, clothing, &c. Adding, then, to the amount of a year's board, at \$1 per week, - - - \$52 00

For clothing, at the medium between \$18, as

estimated by Lieutenant Ogden, and \$24,

as estimated by Captain Delafield, - \$21 00

And for taxes, - - - 88

The annual expense would amount to - 73 88

\$330 56

According to an average of these rates, the expense for food, clothing, and taxes, of one negro one year would have been \$82 64, and of 200 negroes for 3½ years, - - - - - \$53,716

### 3. *Medical attendance, &c.*

E. Clark has, in his deposition, set down medical attendance and medicine at \$1,500 a year, and this rate has been assumed in the proposed award. By the books of the contractors, Doct. A. Salle appears to have received credit, for his services as physician, from November, 1818, to February, 1820, at \$1,000 a year, and from the latter day to the 10th May, 1820, at \$2,000 a year. In the interval between the two latter dates, the slave force had been considerably increased, and to this the advance in his compensation is deemed to be ascribable. Under the arrangement with General Starke, the force of that description was to be more than doubled, and a material further augmentation of the expenses under this head was doubtless occasioned thereby. It is, besides, obvious that one physician could not have attended both at Dauphin island and the Red bluffs, places twenty miles asunder, and with an ocean between them the entire distance. \$3,000 per annum may, it is conceived, be regarded as a low rate of expense under this head, and which, for 3½ years, would amount to \$9,750

As indicated by Captain Delafield's testimony, an hospital establishment would have been needed at Dauphin island, as would also another at the Red bluffs, and estimating the expense of each per annum at only \$500 for stores, medicines, and other necessities of all kinds for the sick, and for the hire of attendants, &c. the amount for three and a quarter years, would be - - - 3,250

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13,000

### 4. *Compensation of masons, carpenters, &c.*

Colonel Gadsden appears, by a voucher with his accounts, to have made a payment to Turner Starke, as agent for Richard Harris, for 150 days' carpenters' labor in January, 1821, at \$3 per day, \$450. In May, 1822, Captain De Russey is shown, by a voucher with his accounts, to have paid to David Doane, for 192 days' carpenters' work, and 58 days' masons' work, each at \$3 per day, \$750; and, with the accounts of Captain De Russey for the last quarter of 1822, there are various pay-rolls of mechanics, and according to which the head workmen (carpenters) were paid at \$3 per day, and the carpenters at \$2 25 per day. These rates appear to have prevailed during the following year, except that, in some instances the latter was increased to \$2 37½ and \$2 50 per day. In the last quarter of 1823, the United

States appear to have commenced the regular employment of masons, and the rolls for that period, and the following year, show that they were paid, one at \$100 per month, and others at \$2 75, \$2 50, and \$2 37½ per day. To execute the masonry work, centres, scaffolds, &c. would have been requisite, and the making and putting up these would have rendered the employment of carpenters indispensable, leaving out of view the carpenters' work, to which the contract with the United States refers, and that the expense of making and putting up the centres, scaffolds, &c. was considered equal to two-thirds of the expense of laying the bricks, is evinced by the contracts with David Doane, and D. H. Hemenway.

<i>Masons.</i> —1 at \$100 per month	\$1,200	
10 (half the number fixed on by Lieut. Ogden, letting slaves be taken for the other half) at \$2 50 each per day, 250 days, or \$6 25 per year each	- 6,250	
		\$7,450
<i>Carpenters.</i> —1 at \$3 per day, 250 days	- 750	
4 at 2 25 do do	- 2,250	
		3,000
<i>Superintendents.</i> —Say, 1 at Dauphin island and 1 at the Red bluffs, at \$1,200 a year each	- -	2,400
Colonel Gadsden states, in his deposition, that he gave \$4 a day, and his accounts show this being equal to \$1,460 per annum.		
Mr. Fisher has, in his beforementioned statement, set down his compensation (which was not to have been charged, as he was to have had one- fourth of the profits) as principal manager at the Red bluffs, at \$2,000 per annum, and for General Starke's superintendence at Dauphin island, a like rate might be assumed.		
<i>Overseers of slaves.</i> —The number fixed on in Mr. Clark's testimony is four, and will here be taken, although a doubt is entertained as to its sufficiency, at \$750 per annum	- -	3,000
<i>Clerks.</i> —Say 1 for Dauphin island, and 1 for the Red bluffs. The books of the contractors show that they kept 2, viz. John Cline, at a salary of \$1,500, and Richard Naylor, at a salary of \$600	- - - -	2,100
<i>Storekeepers.</i> —Say 1 at Dauphin island and 1 at the Red bluffs, at \$600 each	- -	1,200
		19,150
		3¼
		57,450
		4,787½
		62,237 50

5. *Transportation of materials, &c.*

Of the extent of the means of transportation which the contractors had at their command, or of the expense attending the same, no certain information can be collected from the documents. All the bricks furnished, with the exception of 100,000, were delivered after General Starke had the management, and the books produced contain no entries as to his transactions. Under the head of transportation E. Clark has, in his deposition, (page 35, Doc. No. 69,) made an estimate, as follows:

50 white seamen and laborers for the transportation of materials, including board, at 25 dollars per month each, for three years	-	-	-	-	-	\$45,000
Cost of 10 light vessels, at \$1,000 each	-	-	-	-	-	10,000
Finding the same for three years, say \$1,000 each	-	-	-	-	-	10,000
10 teams, including their keeping, wagons, carts, &c. for the same length of time, say as much more	-	-	-	-	-	20,000
						<hr/> \$85,000 <hr/>

Within less than a month after the abandonment of the contract, namely, on the 12th May, 1821, Captain de Russey in a letter to the Engineer Department, thus wrote: "The want of vessels as transports in this bay is sensibly felt; for that reason, an exorbitant price is expected for the transportation of materials. *Five or six dollars per thousand bricks* is what is now paid for a distance not exceeding twenty miles." In another letter from him to the Engineer Department, dated 1st September, 1822, he said, "I have for six weeks back been trying to purchase one or two vessels as transports; they are not to be found in Mobile, Pensacola, or New Orleans. One was offered for \$2,300, which does not burthen 40 tons. Those vessels must be had before we can remove the materials to be contracted for, as the persons who have offered to contract for the supply of bricks decline transporting them." Eleven light vessels appear to have been thereafter bought for the United States in New York, &c. The cost of one of them has not been ascertained for want of knowing by what officer the purchase was made; of the other ten, only three are shown to have been obtained at prices (including expenses of repairing, fitting out, and navigating them to Mobile from the places of purchase) under \$2,000, and the average cost of the ten exceeded \$2,100 each, exclusive of an expense of several hundred dollars each, which had to be thereafter incurred in coppering them as a protection against the worms. It seems evident, therefore, that when setting down the cost of vessels at \$1,000 each, Mr. Clark must have been under very erroneous impressions, and have underrated it more than one-half; and that his estimate of the expense of finding them (\$333 33 per annum each) is also greatly too low, is rendered obvious by the

vouchers for the expenses incurred in repairing those purchased for the United States as aforesaid, and in supplying them with new cables, anchors, sails, ship-chandlery, &c. from time to time. The pay-rolls evince, too, that the crew of each vessel generally consisted of five; and, at this rate, ten vessels would have required the entire force he has estimated for, both for manning the vessels and driving the ten teams. His estimate for wages and board is also deemed to be too low. The United States had to pay \$40 per month to each captain; \$25 per month to each mate; and from \$15 to \$20 per month to the remainder, in addition to their board. Letting it, however, be taken for granted, that forty of the force mentioned by Mr. Clark might have served to man the vessels, (setting apart the other ten for drivers of the ten teams) and that their wages and board, and the expense of keeping the vessels in sufficient repair, &c. might not have exceeded the rates set down by him. The contractors, supposing them to have been the owners of the vessels, would, even according to his testimony, have had to be at an expense for ship transportation alone, in three and a quarter years, of \$49,833 33. Leaving out of view three and a quarter years' interest on the cost of the vessels, whatever it might have been; the risk of loss to which a service like that they would have had to be employed in, would have exposed them; and the decrease in their value, by deterioration, during three and a quarter years' use; which, in such a service, must necessarily have been very great. It was not until 1824, after most of the vessels acquired by the United States, as aforesaid, had been purchased, that hired transportation of bricks, at \$2 and \$3 per thousand, (and that only to a comparatively very small extent) was obtained by Lieutenant Ogden and Captain De Russey, as expressed in a previous part of this report. Under all the circumstances, therefore, the highest of those rates may be esteemed a very moderate one for the present purpose; and at which the ship transportation of, say eighteen and a half millions of bricks, would amount to

\$55,590

For scowage, from the shore at the Red bluffs to the vessels, a distance, according to the before-mentioned statement of Mr. Fisher, of 500 yards, and the labor of placing the bricks on board the scows, and also of removing them therefrom to the vessels, especially under such circumstances as are described in that statement, one dollar per thousand may be considered a low rate, as it may for the scowage and labor at the Dauphin island end of the line, and at which the same would amount to

37,000

The cartage, at only fifty cents per thousand at each end of the line, would have amounted to

18,500

Wood for burning the bricks, and for fuel for the



laboring force at the Red bluffs, would have had to be hauled, as would also wood for burning the lime and for fuel for the laboring force at Dauphin island. Previous to the arrangement with General Starke, a contract appears to have been entered into with Mr. Fisher for the cutting, cording, and hauling to the brick yards of 12,000 cords of wood, at two dollars per cord; and the books of the contractors show that, in April, 1820, the month in which that arrangement was effected, Mr. Fisher received a credit for cutting 1,276 $\frac{3}{4}$  cords, at one dollar, and for hauling 860 $\frac{1}{4}$  cords (the difference being caused, as is denoted in a memorandum in one of the books, by another person having hauled 28 $\frac{1}{2}$  cords, and by the remaining 388 cords having been still in the woods) at the same rate, thus manifesting that the proportion payable for the hauling was one dollar per cord. What quantity would, after the abandonment of the contract, have had to be hauled for burning the bricks, and for fuel for the force at the Red bluffs, cannot be ascertained; nor can the quantity that would have had to be hauled for burning the lime, and for fuel for the force at Dauphin island. The shells, besides, for making the lime, would have had to be transported, as would also sand for making the mortar. An estimate of Colonel Gadsden, prepared for the contractors in February, 1820, as to the probable cost of tapia work, shows that the shells had to be brought a distance of two miles; and the testimony of Lieutenant Ogden states that the sand had to be carted 500 yards. The setting down of the expense of hauling the wood for both burning the bricks and for fuel for the laboring force at the Red bluffs, at \$10,000, and the expense of hauling the shells, (estimated by Colonel Gadsden at \$1 11 per cubic yard) the sand, and the wood for burning the lime, and for fuel for the laboring force at Dauphin island, at half as much more, will, it is conceived, be quite within bounds, - - -

15,000

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 126,000 00

As indicative of the very high price which, in that section of country, had to be paid for transportation, an extract from the books of the contractors, under date of "Red bluffs, February, 1820," will be here introduced.

Fortifications Dr. to George Fisher, for 22 days' work, with wagon and driver, say 11 days at Fish river and 11 days here, at \$10 per day - - - \$220 00

Fencing, clearing, &c. by 10 negroes, 7 days, per bill	-	-	-	-	-	129 50
15. 2 wagons and 3 negroes, 1 day,	-	-	-	-	-	\$26 00
17. 1 wagon	3	do.	do.	-	-	16 00
18. 1 do.	2	do.	do.	-	-	14 00
1 do.	3	days, at \$10	-	-	-	30 00
						<hr/>
						\$435 50
						<hr/>

Here, it will be seen, that the contractors themselves gave credit to Mr. Fisher at \$10 per day, for the hire of each team, and at \$2 per day for the hire of each negro; and that they would have done this, if such had not been the current rates there, is not to be supposed.

#### 6. Tools, utensils, &c.

Agreeably to the estimate of Mr. Leckie, adopted in the proposed award, the cost of the tools and lumber required in making the bricks would have been  $12\frac{1}{2}$  cents per 1,000; and at this rate, for say  $18\frac{1}{2}$  millions, the amount would be

\$2,317 50

The cost of tools, &c. for the masonry work would, according to the analysis of prices, have been 25 cents per cubic yard; and, at which, the amount for the 28,554 cubic yards remaining unexecuted would have been - - -

7,138 50

Tools, too, for making the lime and the mortar, digging the sand, and cutting the wood, must necessarily have had to be supplied, as must also lumber and nails for making the centres. For an estimate of these there is but little data to be found; and, to make an even sum, the amount will be set down at - - -

5,544 00

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15,000 00

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\$425,953 50

Lumber, for centres, to the amount of \$3,657 30, appears, as before observed, to have been procured, thereby indicating a necessity for it for them, to that extent, at least, although it was not so applied.

This estimate has been made with reference, not to the period when the contract was entered into, and when the prices of labor, provisions, and materials, are represented to have been higher, by one-half, than they were at the time the contract was abandoned, but to a period when the reduced prices prevailed; and the amount arrived at exceeds, it will be seen, the sums which, under the contract, would have had to be paid for the whole of the 30,000 cubic yards of masonry and 100,000 cubic yards of excavation, which the United States were thereby bound to prescribe. It, besides, does not exhibit all that might with propriety, in the opinion of the Third Auditor, be taken into view by the commissioners. The

contract stipulated that the United States should pay to the contractors the value of every cargo of materials which the engineer might pronounce to be delivered, of proper quality, at Dauphin island, for the construction of the fort; such value to be considered in part payment of the work; and should also pay to the contractors \$12,500, if demanded at the close of each month, after the work should have been commenced; provided, that the work done at the close of every month, as aforesaid, should amount to \$12,500 exclusive of the materials used in the construction of said work. Further than in paying for the materials as aforesaid on delivery, the United States were under no obligation to make payments in advance; and the utmost that they had, before the time at which the contract was abandoned on their part, been under any liability to pay, either for materials delivered, or work performed, did not exceed \$45,466 69. The advances to the contractors at the time referred to, over and above the \$45,466 69, amounted to \$116,784 68; and, in the adjustment of an account between their representatives and the United States, on the principles of justice and equity, interest on the advances constituting the latter sum, from the dates at which they were made up to the times at which the same would have been refunded by stoppages out of the monthly payments for the work, in case the prosecution thereof had been continued, would, in the opinion of the Third Auditor, form a proper item. These advances were made in 1818 and 1819, and, as an average period for a computation of the interest, at least three years might be assumed, and for which it would amount to more than \$21,000.

The preparatory arrangements at the Red bluffs are represented to have cost not less than \$60,000; and, in estimating the expenses to the contractors of making bricks there, interest on the cost of these preparatory arrangements would seem a fit item to be regarded, as would also a large portion of the cost itself, owing to the great diminution the value of the property would have undergone after the completion of the fort, in a section of country where a demand for bricks would then, in a main degree, have ceased. And so, too, in estimating the expense to the contractors of executing the work at Dauphin island, would interest on the cost of the buildings erected there for the accommodation, &c. of the workmen, superintendents, &c. as well as the chief of that cost, because, after the completion of the fort, the buildings would have had to be taken down, and been of no value beyond that of the materials with which they were constructed.

Unless, contrary to design, the estimate on the whole shall prove to be extravagant in a very high degree, it manifests that, instead of such large profits as were anticipated, none would have been derivable, even if the work had been executed while the low prices of labor, provisions, and materials prevailed. The work on the fort at Mobile Point was nearly all performed, and the materials for it procured, after the great fall in those prices. As to plan, dimensions, and estimated cost, that fort and the one which was to have been constructed on Dauphin island were precisely alike. The cost of each (after deducting for an error) was estimated at \$583,292, and the actual cost of the one at Mobile Point ap-

pears to be upwards of a million of dollars. The estimate of the Third Auditor might undergo a reduction of considerably more than one-half, and yet evince that nothing would be payable to the claimants in respect of the only work which the United States were, in his opinion, bound by the contract to prescribe and pay for.

PETER HAGNER, *Third Aud.*

TREASURY DEPARTMENT,

*Third Auditor's Office, December 22, 1834.*

presented the power of a billion of dollars. The purpose of the Third  
 Annual Report was a statement of the fact that the United States  
 and its allies had nothing to fear from the claims in respect  
 of the only way which the United States were in his opinion, bound by  
 the contract to observe and to pay.

THE UNITED STATES DEPARTMENT OF THE INTERIOR

THE BUREAU OF LAND MANAGEMENT

WASHINGTON, D. C. 20250







[ *To be annexed to Document No. 78.* ]

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JANUARY 26, 1835.

Printed by order of the House of Representatives.

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*To the honorable the Committee of Claims of the House of Representatives of the United States :*

By an act of Congress, passed on the 14th July, 1832, entitled "An act for the relief of the legal representatives of Nimrod Farrow and of Richard Harris," the Third Auditor of the Treasury, the Second Comptroller, and Charles Gratiot, are authorized and directed to examine the claims of those representatives against the United States, arising from a contract to construct a fortification at Dauphin island, on the principles of justice and equity; and they are empowered and directed to take further testimony on the part of the United States, if they shall think the same necessary to accomplish the ends of justice; to prescribe rules for taking testimony on behalf of, and giving notice to the parties respectively; and to call on the claimants for books and papers relating to expenditures under said contract; and they are directed to report the testimony so taken, with their award, to the next session of Congress.

The commissioners thus appointed, after receiving from the claimants all the books and papers in their possession belonging to the deceased contractors, and after taking further evidence on the part of the United States, and devoting much time and labor to the investigation of the subject thus committed to them, have recently made their report to the present Congress. Two of the commissioners have concurred in an award in favor of the claimants, and have stated therein the principles and the proofs upon which they have done so. The other commissioner has dissented, stating also the grounds of his dissent.

The claimants were certainly under an impression that, as Congress had selected three of the officers of Government to investigate and award upon their claims, which had been so long depending before Congress, with such frequent recognitions of their justice to some extent, that the decision that might be thus obtained would be final. They were prepared, and had so declared when the reference was made, to submit at once and forever to that decision, if it had been against them. And, although they saw that Congress had reserved to themselves, by the terms of their act, some control over the award, by requiring that it should be reported, together with the testimony that might be taken, they presumed that this was only intended to secure the Government from the possible consequences of new and important evidence being taken on the part of the United States, and disregarded or misunderstood by the commissioners, or from such course being taken by the commissioners in making the investigation and decision as ought to avoid

their award. Although the claimants have no other objection to the same full and particular examination of their claims, to which Congress has been so long ago and so frequently invited, except the delay that it must necessarily occasion, they still hope that an award made by such persons, under such circumstances, will at least be so far respected as to be held presumptive if not conclusive of the justice of the claim, and that Congress will require, before it rejects it, the clearest evidence of its being contradictory to the proof, or in opposition to those principles of justice by which the commissioners were directed to be governed in deciding it. Have the commissioners then mistaken the facts or the principles of equity applicable to the consideration of the claims? Unless the award can be impeached on one of these grounds, the claimants ought to be no longer delayed.

They are aware that this is attempted; that one of the commissioners, eminent for his skill and ability in opposing claims upon the Government, and unwearied in investigating all possible grounds of objection, has employed much time and labor (influenced no doubt by a sense of duty) in endeavoring to impeach the principles and dispute the facts upon which the award has been made. His arguments, calculations, and views are presented in a very imposing manner in his report. The claimants, if time would permit, would be glad to reply to it much more particularly than it will now be in their power to do. A brief consideration of it, however, they think will be sufficient to show that where his views differ with those of the majority of the commissioners either as to the principles of justice applicable to the case, or to the proofs upon which the award is made, the error is with him, and not with the majority.

In one important point Mr. Hagner differs with the other commissioners, both as to the fact, and the principle which should regulate the contract. He comes to the conclusion of fact that General Bernard's plan of the fort was never materially enlarged; and the principle he adopts for the compensation of the claimants is the minimum amount of work stated in the contract.

Here, then, is direct opposition in both these particulars between the majority and minority of the commissioners. Let us then consider this question:

Whether, in estimating the probable profits which the contractors would have realized if the work had been finished, we are to assume the plan which the contractors were actually ordered to execute, or the smallest quantity of work to which the United States, by the terms of the contract, were limited in prescribing a plan of the fortress. Upon this fundamental question, we refer to the argument presented to the commissioners by the claimants, and the stronger and more condensed view to be found in the majority report.

As to the difference upon the fact, what was the plan actually adopted by the Engineer Department, and prescribed to the contractors? On this part of the case, Mr. Hagner quotes with a tone of triumph a passage from a letter addressed to him by the administrator of one of the contractors, and intimates that there is a discrepancy between the ground taken by the claimants and that assumed by the majority report; the latter giving more to the claimants than they had ever demanded. A slight examination will be sufficient to show the error, both of fact and inference, into which Mr. Hagner has fallen on this branch of the inquiry.

By reference to the statement and argument laid before the commissioners, it will be seen that one of the governing principles which the claimants sought to establish, was, that the plan actually prescribed to the contractors when they commenced the work should be taken as a basis. This point had been left in suspense by the former commissioner, who, although he gave an opinion unfavorable to the claimants, yet made alternative statements; and thereby left the question open for the action of Congress. Upon this question, the majority report says: "The discretion of the Government was limited in the descending scale, by providing that at least thirty thousand cubical yards of masonry will be constructed, and at least one hundred thousand cubical yards of earth will be excavated. But by virtue of the discretion with which the contract invested the Government, to prescribe any work requiring for its construction a greater quantity of masonry than 30,000, and a greater amount of excavation than 100,000 cubical yards, it appears (from a document referred to) that the plan of the work above referred to (enlarged to an extent set forth in that document) was adopted as that of the work to be erected on Dauphin island, and *prescribed to Harris for his government when his operations commenced.*"

The extract quoted by Mr. Hagner says: "The claimants never meant to say, as one of the interrogatories to De Russey seems to intimate, that any material change was made in the plan of the work actually *ordered* by the Engineer Department. All that they have insisted on is, that the plan thus ordered shall be taken as the basis in estimating the profits which would have been realized, had the contractors been permitted to execute that plan. They complain that the former commissioner, instead of taking that plan as the basis of his calculations, took the minimum, to which, by the contract, the United States were restricted."

Now, Mr. Hagner is welcome to the benefit of all the difference between the "plan adopted" "and prescribed to Harris when his operations commenced," the language of the majority report, and "the plan of the work actually ordered by the Engineer Department," the language of the letter from which he quotes. Still, the question recurs, what was that plan? The author of the statement and argument laid before the commissioner, supposed erroneously that the details of it appeared by the plan and estimate drawn up by General Bernard, which is attached to the report of the former commissioner. This was the only document to which he had access. His calculations are therefore based upon it. He never, until he read the report of the present commissioners, according to his present impressions and belief, heard of the letter of General Macomb, of 24th February, 1827. That paper cannot be in document 69, from which he drew his information, because that is a report of a committee in 1824-'5. It now appears that General Bernard's scheme was drawn out before the contract was executed. After it was executed, and before the contractors commenced their operations, it was altered so as greatly to increase the elevation of the embankment, and thereby to cause a great increase of the number of cubical yards of masonry to be constructed, and earth to be excavated, or rather of embankment to be made; for, from a circumstance hereafter noticed, the embankment was to be made of earth procured from a sand hill, instead of the ditch as first proposed. (See note 1, appended to the majority report.) Now it appears



that this increased quantity of work made part of the plan "prescribed to Harris for his government before his operations commenced," as stated by the majority report, and the letter of General Macomb, on which it is based : and Mr. Hagner is driven to the necessity of contending that General Macomb, then the chief engineer, undertook to furnish the committee with information which he did not possess himself, and misled them on this, one of the most important subjects of their inquiry. And on what evidence does he rest this bold charge against the then chief engineer? Merely on answers given by Colonels Gadsden and De Russey to certain inquiries propounded to them. Now, it is to be remarked that these inquiries are all pointed to supposed changes of plan *after the work was commenced*. No such change, he has truly said, was ever complained of, either by the contractors or their representatives. The only alteration was in lessening the depth of the ditches, and thereby making it necessary for the contractors to procure the earth for the embankment elsewhere. But the change which required the increased quantity of work was one which increased the elevation of the embankment. This constituted the difference between the plan sketched by General Bernard, and contemplated by the department when the contract was entered into, and that "actually adopted" and "prescribed to Harris for his government when his operations commenced." (See note 1, already referred to.) Whilst on this question, it may be as well to notice the "summary" extracted by Mr. Hagner from the statement furnished the commissioners by the present claimants. The statement of which that summary is the result, professedly omits many items of work on which the contractors would clearly have realized a large profit. But, although omitted, they were not abandoned. It was also made on what the claimants considered the most unfavorable hypothesis on which their profits could be calculated ; an hypothesis which charged them with the *hires* of their own slaves—one which the majority have properly rejected. It was, moreover, as already stated, framed upon the erroneous idea that General Bernard's plan, and that which the contractors were ordered to execute, were identical ; a plain mistake, if General Macomb is to be relied on. To sustain Mr. Hagner in his difference with the majority of commissioners as to the fact, General Macomb must be disbelieved.

He is to be taken to have stated in his letter, when officially called on for information which his office enabled him to give with certainty, a fact which he had no means of knowing, and which therefore the commissioners ought not to have taken as true. He was not the chief engineer when these works were planned, and therefore Mr. Hagner thinks he could not know that General Bernard's plan of this fort was enlarged, as he says it was. Surely Mr. Hagner might recollect that, although General Macomb did not then fill his present situation, yet that in his office, and consequently necessarily within his knowledge, are to be found the plans and estimates of all the forts, and of all the alterations adopted before ordering their execution ; and that it was, therefore, because his office contained the information sought, that he was called on for it, and that he could not have given it in all its details, as he has done, if it had not been there.

With whom, then, is the error as to this important fact ?

And as to the principle, is he not also wrong ? When the contractor

received his order to execute his contract according to the prescribed plan, (that being the enlarged plan, and not General Bernard's,) did it not fix the term of the contract as to the extent of the work, which had been left indefinite in the contract when executed? For the safety of the contractor, a minimum is inserted; but when the Government adopt a plan, and prescribe it to him under the contract, that designates, then, with certainty the quantum of work for which he is to make his preparations, and in executing which he has a right to estimate his profits. Suppose this minimum, evidently inserted for the benefit of the contractor, and not of the United States, had been omitted, would not the United States, as soon as they adopted and prescribed a plan, have been bound by it as to the quantum of work? Can this obligation, then, be evaded, by resorting to the minimum inserted, before the plan was adopted, for the protection of the contractor, because it was uncertain what would be the extent of the work? (See former argument of claimants on this point, in Doc. No. 69, Report of Committees of 1824-'5, vol. 1, page 87.)

Mr. Hagner's next position is, that Mr. Harris was unqualified to execute the task which he had undertaken, and many extracts of letters from the superintending engineers are referred to as proof of the fact. It is conceded. But the contractors having discovered his unfitness, substituted Starke as their agent, and gave him a share of the contract; all the evidence shows that *he* was well qualified. He possessed vigor, intelligence, skill, capital, and credit. Whatever losses the want of experience of the contractors, and the incapacity of Harris, had brought upon them, (and they were numerous and heavy,) were now in a fair way of being reimbursed. The claimants refer with confidence to the testimony of all the witnesses, and to the letter of Col. Gadsden, relied on by Mr. Hagner in support of this position.

But Mr. H. contends that a breach of the contract on the part of "the contractors, if it had not been abandoned by the Government, would have been inevitable." p. 22. The work could not have been completed within the time prescribed. In reply to this objection, the claimants would refer to the answer furnished by the majority report, and more particularly to the opinion reported to Congress by Mr. Swann, the former commissioner, acknowledged by Mr. Hagner to be "an *experienced lawyer*." On this subject he says, (see Doc. 69, Reports of Committees, 1824-'5, vol. 1, page 91.) "That, from the period of its commencement, to the time of the abandonment of the work on the part of the Government, in the spring of 1821, the contractors were industriously and zealously engaged in the prosecution of it; and from the preparations which they had made, confident expectations were entertained by several of the witnesses that the work would be completed within the period prescribed by the contract. Without deciding whether this could be effected within this period of time, the commissioner is of opinion that, as the contractors had until 1st of December, 1821, to perform the work, they could not be chargeable with any failure to perform it before the expiration of that period; and that, as the Government had abandoned the work before that time, they had, by so doing, broken the contract, and become chargeable to the contractors for such damages as they had sustained in consequence of it." Again he says, in page 93: "The testimony unites in proving that, at the time of the abandonment of the

contract on the part of the Government, every thing was in complete preparation for the successful prosecution of the work—in the language of one of the witnesses, ‘a very sufficient outfit of tools, implements, laborers, and mechanics, to have completed the work within the stipulated time, with a large stock of provisions, and materials of all kinds, including materials of brick, lime, timber, iron, &c. &c., and a sufficient number of vessels to transport the same to Dauphin island.’ Upon this state of things several witnesses have expressed their opinions, and have declared that the course pursued by the contractors, of substituting slaves for hired white men, was judicious; and that, with the slaves which they had purchased, and had engaged for the prosecution of the work, they would not only have been able to have performed it within the period prescribed by the contract, but with very great profit to themselves.” The Committee of Claims, which examined the case upon the report of Mr. Swann, (page 1,) say, “they are satisfied, from the evidence, that the amount of the award falls far short of the actual expenditures, losses, and costs, which the claimants have sustained in consequence of their contract to erect the fort, &c.; that they did not do so, was not their fault, but was notoriously the fault of the Government.”

Thus Mr. Hagner dissents not only from the present commissioners, but from all others who have heretofore considered the subject.

Let us now consider Mr. Hagner’s views as to this question. What would it have cost the contractors to complete the work? This brings up the question whether we are to assume the plan of procuring labor by the *purchase* of slaves—a plan which they had been led by experience to adopt, and which was in the full tide of success when the work was arrested; or by *hiring* either free or slave labor, one which the same experience had led them to reject. The majority have supposed the work to be finished by the means actually provided; Mr. Hagner, by those which had been tried and rejected. In treating of what he justly calls “the very important item of slave labor,” Mr. Hagner draws an unwarrantable distinction between Farrow and Harris, and Starke, their agent and partner. In estimating the means provided to carry on the work, he deprives the contractors of the aid which they had actually procured by their arrangement with Starke. The means supplied by Starke were as much the means of the contractors as if they had procured them in any other way; and whether they were to settle with Starke by allowing him hire for his slaves, or otherwise, was a matter which no way concerned the Government. The truth is, that he was to have a share of the profits; and we are now inquiring what those profits would have been, not how they are to be apportioned between those entitled to share them. When that question comes before the proper tribunal, the present claimants expect to show that Starke received payment for all the work performed by him. That Farrow transferred to Starke’s representative all the slaves which remained after the losses occasioned by the detention of them by the Government; and all the utensils, teams, boats, &c., used about the work, at a stipulated price, which, together with hires of slaves, &c., will possibly amount to fifty or sixty thousand dollars. This arrangement was made pending the claim before Congress, at a time when the claimants had every reason to believe that the Committee of Claims was about to report a large sum in

favor of the contractors, and with a view to silence the representative of Starke, whose interference was likely to impede the passage of the bill which the committee was about to report. This arrangement has secured to Starke's representative a full share of the profits estimated upon the largest scale, whilst it left Harris and Farrow to a hitherto fruitless pursuit of justice at the hands of Congress. And now, to make the arrangement with Starke by which he and all his means were enlisted for the prosecution of the work, the basis of a mode of estimating the cost of completing it, by which the original contractors are deprived of all profit, would be hard indeed. And yet, strange as it may appear, Mr. Hagner has seized upon an arrangement by which Starke and his one hundred and fifty slaves were added to the force already provided by Harris and Farrow as the groundwork upon which he makes them, in spite of themselves, execute the work by hiring slaves at twenty dollars per month, instead of performing it with those which they had thus procured. If any additional evidence is wanting to show the value of "the important item of slave labor," it will be found in the testimony of Captain Delafield, one of the United States engineers, taken by the commissioners, and referred to in the letter from Farrow's administrator, from which Mr. Hagner has quoted.

He says, (speaking of the substitution of slave for hired labor,) "The result of such a plan, when compared with hired labor to be procured in the Gulf of Mexico, would have ensured a fortune to any individual capable of managing slave labor."

Mr. Hagner goes into a long statement and calculation to show the cost of transporting bricks from the Red bluffs to Dauphin island, and the difficulty of procuring vessels. Now, the short answer to all this is, that the contractors had provided ample means of transportation. They had horses, carts, flats, and a steamboat. (See Alsop's deposition.)

Mr. Hagner objects to the estimate of \$600, made by the majority, as the price of slaves, and shows that one of the contractors, on one occasion, bought a number at New Orleans, which cost him upwards of \$700. Such a fact by no means shows the estimate to be unreasonable. Because, on an emergency, a contractor buys at the nearest market, where slaves are high, does it follow that he must always do so? What Mr. Farrow gave for the slaves bought with the advance of \$45,000, does not appear; but they probably were bought in Virginia for much less (as we know they could have been) than \$600. Although, in one instance, they may have bought at New Orleans, it is not reasonable to suppose they would have gone there when they could have been procured, as is well known, much cheaper elsewhere.

Mr. Hagner, in the course of his remarks, (pages 44, 45, Doc. 78,) is not content with disputing the facts of this award, but, in reference to \$10,200 heretofore paid Farrow and Harris for the loss of certain of their slaves, evinces his superior vigilance for the interests of the Government, by impeaching with injustice the determination on that subject, both of the Committee of Claims and the Secretary of War, and the Congress of the United States, with the sanction of all of whom that payment was made. This transaction has nothing to do with the award, yet it seems to be considered by Mr. Hagner as if that sum was now awarded to the claimants.

The claimants have received that amount for a distinct claim, having nothing to do with the profits of the work, and it being, as they always contended, and are still prepared to prove, much less than their actual loss.

In 1825, Congress, satisfied that the Government then held certain slaves of Farrow and Harris, which had been detained from them under an impression that they were indebted to the United States, a mistake which Mr. Swann's report had then corrected, passed a law directing such of them as remained to be given up to them, and compensation to be made to them for such as were lost.

The contractors showed (as they think) that twenty-three were lost, and claimed a much larger sum than \$10,200; but the Committee of Claims, at the next session, passed the resolution quoted by Mr. Hagner, and, under it, the claimants received that sum.

And it is now denied, in the face of all this, that they were ever wrongfully or injuriously detained. And Mr. Hagner contends that they were only detained by the United States for the benefit of the contractors, and to prevent their creditors from taking them out of their employment; and his proof of this is, that, when the lien on them was given to the United States, it was done from an apprehension that the claim of some creditor would be interposed to prevent them from having the use of the slaves in executing their work.

Now, the work was abandoned by the Government in 1821, and these slaves were kept till after the law of 1825, and neither the contractors nor their creditors allowed to take them, the United States contending all the while against the remonstrances of the contractors; that they held them not to benefit the contractors and keep them from their creditors, but as a security for the debt claimed from the contractors by the Government. The letters from the officers of the Government state the detention, and the cause and object of it, in the plainest terms, and the proof was conclusive and satisfactory, both to Congress and the War Department, of the consequent loss; and why the subject is now renewed by Mr. Hagner, except for the purpose of showing how every body else has been mistaken, and that he alone can be right, the claimants are at a loss to conceive. Many other details and remarks of this report of the dissenting commissioner are open to the clearest refutation. Enough, it is hoped, by the claimants, is here shown of its incorrectness, to prove that its attempts to impeach the award of the majority of the commissioners are unfounded, and cannot be sustained.

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*To the Commissioners appointed by an act of Congress passed on the 14th day of July, 1832, for the relief of the legal representatives of Nimrod Farrow and Richard Harris :*

In presenting the claim of Harris and Farrow for your decision, we deem it unnecessary to go into a detailed history of its origin and progress up to the present time. They were contractors with the United States for the erection of a fortification on Dauphin island; they allege that the contract was broken by the Government. This allegation is sustained by the report of Commissioner Swann, and his report has been,



*on this point*, sanctioned by Congress. They allege that the sum reported by him as compensation for this breach of contract is insufficient. This allegation has been sustained by several concurring reports of the Committee of Claims, and the decision of the House of Representatives on a bill which, after full debate, passed that House in 1829, but not acted on in the Senate for want of time. It is opposed by one adverse report of the Committee of Claims, and the question whether it is true or no, and, if true, to what extent, is, by the act of the last session, referred to you.

It is a conceded fact, that the contractors were zealously and successfully engaged in the fulfilment of their contract when the requisite appropriation was withheld by Congress, the work discontinued, and the contractors dismissed. It is also conceded that, for this breach of contract on the part of the Government, the contractors are to be compensated; and the first question to be decided is, what shall be the measure of compensation? Mr. Swann, to whom the subject was first referred, was of opinion that the true rule of compensation was, after paying for the work actually performed, at the contract prices, to estimate what it would have cost the contractors to complete the remainder, and deduct this sum from the price agreed to be paid, and the remainder would show the sum to be paid as compensation. In other words, to place the parties as nearly as possible in the situation in which they would have been if the contract had not been broken.\*

This, we think, is obviously the correct principle. It is that which a court of justice, whether of law or equity, would have applied to a similar case between individuals; and that which is equity between individuals, cannot be more than equity between the Government and individuals. If the contractors had been the defaulters, the United States would have sought indemnity through the courts. Their recovery would have been regulated by the principles of law applicable to individual contracts; and no reason can be perceived why, in a different state of things, the same rules of law should not be applied to the United States. We take this, then, to be the true legal and equitable rule. Our complaint is, that, in applying it to the facts, the former commissioner erred, greatly to the prejudice of the contractors. They commenced the work with white laborers and mechanics hired by the month and by the day. They found this plan in practice a ruinous one. They abandoned it, and substituted the labor of slaves purchased for this purpose. This plan was in successful operation, and promised not only to reimburse them the losses sustained by the employment of white men, but ultimately to secure to them large profits, when the work was discontinued, as already stated, and the Government seized upon their slaves and implements of every description, and detained them for years under a lien which had been given to secure advances. And yet the commissioner, in estimating the probable cost of completing the work, assumes, as the basis of his calculations, that it was to be performed by white men hired by the day; and, in ascertaining the value of that kind of labor, he does not inquire into its actual worth at the time when the work would have been performed, but arbitrarily sets it down at one-third less than the estimate of the Engineer

\* Mr. Whittlesey admits this to be the correct principle. See his report, page 13.

Department when the contract was made; although it is notorious that, when the work was discontinued, provisions, labor, and every thing else, were one hundred per cent. lower than at the time these estimates were made. Instead of this arbitrary and unreasonable mode, the claimants insist that the inquiry should be, "What would it have cost the contractors to finish the work with the means at their disposal?" To this inquiry the answer would have been, "Little more than to feed and clothe their slaves, and pay the wages of a few master workmen and overseers." At all events, not more than the hire of their slaves, in addition to food and clothing, for such work as their slaves could do. Amongst their slaves were many brickmakers, bricklayers, carpenters, and smiths.

We will now proceed to point out, in detail, some of the erroneous results to which the course pursued by the commissioners so naturally led. The first and most important one is in the cost of bricks. The contractors had, at great expense, constructed extensive brick yards, sheds, &c., and, amongst other things, a wharf for shipping the bricks. They had implements of all kinds for making, and carts, wagons, horses, and boats, (amongst others a steamboat,) for transporting them, and they had contracted for wood to be delivered at the yards for \$2 00 per cord. With all these facilities, the commissioner estimates that it would have cost them ten dollars per thousand to make and transport the bricks a distance of twenty miles by water. This estimate is extravagant on its face. Let any brickmaker of this city be called on to say what it would have been worth to make the bricks under these circumstances. Queen has said (see his affidavit) that they could have been made and delivered at the kilns for four dollars per thousand; that they are made by him in this city, under more unfavorable circumstances, at a cost of four dollars, and sold at the price of five dollars per thousand. Mr. Henry, a witness on behalf of the United States, says, that in 1821 bricks were sold at Mobile point at \$5 50 per thousand. This includes cost of constructing yards, providing implements, and profit to the makers. We are inquiring into the prime cost after the yards are provided. Four dollars would be a high estimate. The cost of transportation could not have been great. It is not too much to say that the estimate of the commissioner is double what it would have cost the contractors to make and transport the bricks. But say it would have cost seven dollars per thousand, certainly a large allowance, and the contractors are entitled to an additional profit on this item, of \$40,500, (see the calculation in their memorial.) The next prominent item is the excavation; a labor which could certainly have been performed by slaves. The difference between slave labor in performing this part of the work, and the arbitrary rule adopted by the commissioner, is equal to a profit of 11.2 cents per cubic yard, (see the memorial,) which, on 100,000 yards, the minimum quantity, is equal to \$11,200. From these sums should be deducted the increased profit here insisted on, upon so much of the brick work and excavation as was executed and paid for at the contract prices. The claimants have not the means of stating the amount, but documents in the Engineer Department will show it. The circumstance was overlooked in preparing the memorial.

The commissioner failed altogether to allow any profit on the timber work and carpentry, upon the ground that no estimate had been furnished

of the profit on that part of the work. This was an oversight, the more remarkable as, in a note in which he states the additional sum which he would have allowed if he had taken the plan of the department as the basis of his calculations, instead of the minimum prescribed by the contract, he allows \$5,000 for profit on timber work and carpentry. This increased scale required an addition of 5,552 cubic yards of masonry, and 17,284 yards of excavation; and whilst on this part of the work he allows a profit on the timber work, &c. of \$5,000, he allows no profit for that species of work on the minimum scale which requires 30,000 yards of masonry, and 100,000 yards of excavation. At the rate, then, fixed by himself, he should have allowed upwards of \$25,000 for profit on the timber work, &c., upon the scale taken by him as a basis. We say the commissioner committed an oversight when he said no estimate was furnished him of the profit on the timber work and carpentry. The deposition of Clarke, which accompanies his report, shows that the profit on that description of work would, if the contractors had been compelled to pay Philadelphia prices, (and he says they could have done the work for less,) have been \$18,907: (see Rep. p. 40.)

The contractors stipulated that the fort which they undertook to build should, at the least, be on a scale which would require 30,000 cubic yards of masonry, and 100,000 yards of excavation, and other work in proportion. The Government reserved the power of increasing the dimensions at pleasure. The plan adopted by the Engineer Department, which the contractors were ordered to execute, and which they were actually engaged in executing, required 39,999 cubic yards of masonry for *thick* walls, which, after correcting an error in addition, was advanced to (say for round numbers) 30,000, and 3,642 cubic yards for arches, and certain square yards of masonry for other purposes, which the commissioner makes equal to 1,910 cubic yards, and also 117,284 cubic yards of excavation. Instead of taking this increased scale as the basis of his calculations, the commissioner erroneously, as the claimants insist, adopted the minimum inserted in the contract for the benefit of the contractors, and not as a protection for the United States. Upon this point, the claimants beg leave to refer to the arguments set forth in their memorial, and the printed remarks accompanying it. This error should be corrected by allowing to the contractors the sum stated by the commissioner in note 1, page 98, minus \$5,000, the conjectural profit on the timber work, that being included in the general charge for profit on that item, and plus the profit which they would have made by slave labor in lieu of that assumed by the commissioner, thus:

Profit allowed by commissioner on 17,284 cubic yards of excavation	-	-	-	-	-	\$4,794 96
Additional profit claimed by contractors	-	-	-	-	-	1,772 14
Masonry, exclusive of arches	-	-	-	-	-	9,378 10
Additional profit, at \$1 35 per yard, on 1,910 yards	-	-	-	-	-	2,568 50
Masonry, consisting of arches	-	-	-	-	-	14,094 54
Additional profit on 3,642 yards, at \$1 35	-	-	-	-	-	4,816 00
						<u>\$37,424 24</u>

The claimants also insist that the commissioner did not allow a sufficient sum for damages occasioned by the delay in not providing an engi-

neer. The commissioner allowed only \$4,000, according to the rule applied in Hopkins's case, (see the statement amongst the papers.)

They should have been allowed	-	-	-	\$8,293
Which, after deducting the sum allowed, say	-	-	-	4,000 leaves

For an additional allowance on that score	-	-	-	<u>\$4,293</u>
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But this sum would be insufficient, because they not only lost the labor of their hands, but the hands themselves. They consisted mostly of German redemptioners, purchased for the purpose, who, for want of employment, became rebellious, and finally absconded.

#### *Recapitulation.*

Profit on 30,000 yards brick masonry over and above that allowed by commissioner	-	-	-	-	\$40,500
Profit on 100,000 yards excavation and embankment	-	-	-	-	11,200
Profit on timber work and carpentry, omitted entirely by the commissioner	-	-	-	-	18,907
Profit on the increased scale required by the plan of the Engineer Department	-	-	-	-	37,424
Additional allowance for damages for detention	-	-	-	-	4,293
					<u>\$112,324</u>

Deduct \$1 35 on each cubic yard of masonry, and 11.2 cents on each cubic yard of excavation and embankment made and paid for.

As it regards further evidence, and the production of books and papers, the claimants beg leave to say, that, if the principle above insisted on is adopted, they do not deem it necessary to offer further evidence than that which accompanies Mr. Swann's report, and the affidavit of Queen. Other evidence supporting his statement, if required, can readily be procured.

The books kept by Harris were in the hands of the committee. An attempt has recently been made to procure them, without success. An abstract from them, made, we presume, under the orders of the committee, is amongst the papers filed. Farrow kept no regular books; a fact which can be proved, if required. The statement of expenditures made by him, which accompanies the memorial, was prepared from loose papers, and a memorandum book, which he carried in his pocket, and accounts and vouchers procured from other sources. The amount shown by that statement can be greatly enhanced by calling upon all those who have claims against the contractors, to exhibit them, supported by evidence. The degree, in which that amount would be swelled, may be conjectured from the fact, that in that statement the sum of \$5,000 is charged as having been paid to Ketcham on account of a contract with him; whereas it appears by his memorial to Congress, which he expects, no doubt, to sustain by proof, that he claims \$15,000 as still due him, after giving credit for the \$5,000 above mentioned. There are, doubtless, numerous claims of minor importance, which have never as yet been presented, besides money and property carried out by Harris, and not entered on his books; all of which he stunk. The claimants have no doubt that a

settlement, on the basis of reimbursing moneys paid and debts contracted, with a reasonable compensation for personal *services*, to say nothing of privations and hardships, would produce a more favorable result than the one above presented. The only objection which they would have to the adoption of that principle, is the trouble and expense and delay which it would occasion. While on the subject of books and accounts, they beg leave to say, that the duty of keeping a regular and accurate set of books, however proper as between the contractors themselves, is not among the obligations contracted with the Government

JOS. M. SHEPPARD,

*Representative of Richard Harris, deceased.*

JOHN SCOTT,

*Representative of Nimrod Farrow, deceased.*

November 15, 1832.

As it regards the claim of Farrow, under the act of 1825, the claimant refers to the memorial of Farrow to P. B. Porter, formerly Secretary of War, filed amongst the papers. The undersigned, when he prepared that memorial, was uninformed of a fact, which he now has reason to believe exists, to wit, that since this claim was brought before Congress, and before he had any agency in it, Farrow, and the agent of Harris, conveyed all their interest in the boats, implements, &c., to Starke's representative, and, therefore, the sum of \$5,000, charged on that memorial, is to be stricken out, leaving a balance of \$7,242, due under that act.

JOHN SCOTT.

November 15, 1832.

*Hopkins's contract, dated 18th May, 1818, to commence the work on or before the 1st October, 1818.*

Extract from Colonel Gratiot's report. (Senate Doc. 2d Sess. 20th Congress, page 49.) "Supposing the work was laid out by the 20th of January, 1819, the statement of damages will stand thus:

51 laborers, 3 months, at \$20 per month,	-	-	\$3,060 00
34 do. 2 $\frac{2}{3}$ do. do. do.	-	-	1,813 33 $\frac{1}{3}$
15 artificers, 3 do. 25 do.	-	-	1,125 00
10 do. 2 $\frac{2}{3}$ do. do. do.	-	-	666 66 $\frac{2}{3}$
1 master artificer, 3 months, at \$75 per month,	-	-	225 00
1 do. 3 do. 60 do.	-	-	180 00
4 clerks, overseers, &c. 3 months, at \$1,200 per annum,	-	-	1,200 00

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Board of the above hands, 10,000 days, at 50 cents per day,	-	-	-	-	-	5,000 00
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Amount,	-	\$13,270 00
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The difference between 116 and 75 workmen is	-	4,976 25
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Which, deduct from the above.

Due Harris and Farrow for damages in not laying off work at time appointed,	-	-	-	-	-	\$8,293 75
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OAKWOOD, (NEAR WARRENTON,) January 3, 1834.

SIR: Your letter of the 23d ult., accompanying copies of the answers of Colonel Gadsden and others, to interrogatories proposed in the case of the legal representatives of Farrow and Harris, has been received.

I beg leave to avail myself of this occasion to submit to the commissioners a few remarks upon that evidence. I will begin with the answers of J. F. Ross: and, first, as to the claim which he seems to assert to the benefit of the contract between Farrow and Harris and the Government, under pretended assignments to his intestate, Turner Starke. This claim has never been formally asserted before Congress, either by Starke in his lifetime, or his representative since his death; although it was known to both that Farrow and Harris, and their legal representatives, have pressed *their* claims from the year 1824 until the present time. During that period, a law passed directing the payment of a large sum to *Farrow*, and the restoration to *him* of all the property on which the United States held a lien. A bill passed the House of Representatives, authorizing the payment of a further sum; and the Committee of Claims, at every Congress except the last, reported them creditors of the United States under that contract. In addition to the inference to be drawn from this acquiescence on the part of Starke, the claimants, one of whom I represent, furnished positive evidence that the assignment from Harris, under which alone the claim alluded to by Ross could be asserted, was obtained by fraud and duress; and referred to a deposition (now on file in the War Department,) given by Starke long after the pretended assignment bears date, which expressly negatives the idea that he claimed any title under it. This testimony, I believe, is now in the hands of the commissioners. But whether the benefit of the claim to compensation for a breach of the contract between the United States and Farrow and Harris belongs to their administrators, or to Starke's representative, or any other person as their assignee, is a question with which, I presume, the commissioners have nothing to do; nor is it one with which Congress will meddle. Harris and Farrow were the persons with whom the Government contracted. They gave security for the faithful execution of the contract on their part; to them alone would the Government have looked had the breach been on their part; and they are the persons who alone are entitled to call on Congress for compensation, if the contract has been broken by the Government. To undertake to decide a controversy between these contractors and any other persons who claim either as assignees or creditors, would be to assume the functions of the judiciary, and to deprive the parties of the benefit of a trial before the ordinary tribunals of the country, which, in common with other citizens, they are entitled to. All that could be asked of Congress is to secure the fund, so as to make it available to the party entitled. This will be done by placing it in the hands of the administrators of Farrow and Harris. They will be responsible to the extent of their private fortunes, and their sureties will be responsible to the extent of the penalties of the administration bonds, for the due application of the money. And it will be found, upon examination, that these responsibilities are ample. If the claim asserted by Ross is well founded, the administrators will be trustees for him; and if, after notice, they apply the money to other objects, they and their sureties will have to answer his claim out of their own pockets. The administrators are fully aware of

the responsibilities which they will incur by the receipt of any money which may be found due on the contract in question. And I will take this occasion to say, that, should they be fortunate enough to procure, at the hands of Congress, that justice to the contractors and their creditors which has been so long delayed, it is their purpose to file a bill in chancery, place the money at the disposal of the court, and call upon all who have any claims, either as assignees, creditors, or distributees, to assert them. This seems to them to be a course which is just to all parties, and is certainly the only one which will ensure safety to the administrators.

The remarks on the answers of the other witnesses will apply to the remaining testimony of Ross.

The answers of R. E. De Russey do not call for any particular remark. They furnish little that bears materially on the question submitted to the commissioners. The complainants never meant to say, as one of the interrogatories to De Russey seems to intimate, that any material change was made in the plan of the work actually ordered by the Engineer Department. All that they have insisted on is, that *the* plan thus ordered shall be taken as the basis in estimating the profits which would have been realized had the contractors been permitted to execute that plan. They complain that the former commissioner, instead of taking that plan as the basis of his calculations, took the minimum, to which, by the contract, the United States were restricted.

It is admitted on all hands that the contract has been broken by the United States; that, for this breach of contract, the claimants are entitled to compensation. The breach consisted in refusing, at the mere will and pleasure of one party, to permit the other, who was not in default, to complete the work which the one had contracted to execute, and the other to pay for, at stipulated prices. The obvious justice of the case is to place the parties in the situation in which they would have been had no such breach been committed; in other words, to pay to the contractors the profits which they would *probably* have made if they had been permitted to complete the work at the contract price; and this, I understand, is the rule adopted by the commissioners. I say the profits which they would have *probably* made. We cannot ascertain with certainty the profits which would have been made; our best efforts will be but an approximation to the truth; but, in endeavoring to make this approximation, every *doubt* must be solved against the party who broke the contract, because the doubt is occasioned by his default. Had the contractors been permitted to complete the work, nothing would have remained but to pay for it according to the contract price, and exact justice would have been done. It is the fault of the United States that this exact justice has not been, and cannot now be, administered. Whenever, therefore, a question occurs which this breach of contract on their part has given rise to, and which cannot be decided with reasonable certainty, but it remains doubtful whether a decision one way or the other will do injustice to the United States, or to the contractors, the decision should be in favor of the latter. This is common justice between man and man, and that is all we ask at the hands of the Government.

As it regards the loss to the contractors arising from the failure to have an engineer on the spot at the time designated by the contract, it will be found, I think, that Colonel Gadsden is mistaken, when he says, that "*all* the expense incurred, and damage sustained, were the result of the blun-

derings alone of men who had undertaken what they were incapable of performing." That many and heavy losses arose from this cause, is attested by the large amount expended, and the great mass of debt remaining unpaid. But that *all* their losses arose from that source, is, I think, not true. It will be found, by reference to the contract, that the contractors undertook to be on the spot ready to commence the work by a certain day, and that the United States undertook to have an engineer ready at the appointed time to lay out the work. A considerable number of laborers arrived at or about the appointed time; the engineer did not arrive until some time afterwards. Until the site of the fort was determined on, the contractors could not even construct butts for the accommodation of their hands. They could not decide upon the most convenient situation for a brick yard or a lime kiln. They could, in truth, do nothing. It will be seen, by referring to the testimony, that the laborers thus provided, consisting of German redemptioners, in consequence of remaining in idleness, and want of accommodations, became discontented and rebellious, and finally absconded. The former commissioner correctly, as the claimants conceive, allowed compensation for this loss. His decision, *on this point*, was sanctioned by Congress, and its correctness has never hitherto been questioned by any body. He erred only, as we say, and as the Committee of Claims have repeatedly said, and as the House of Representatives on one occasion said, in the data which he assumed as the basis of his calculations to ascertain the probable profits on the work remaining to be done when the contractors were dismissed. These profits constitute the subject of the claim on which the commissioners have now to pass. It is the source to which the contractors looked for reimbursement of the large sums expended in preparatory works, in constructing extensive brick yards; building houses for the accommodation of themselves, their laborers, artisans, superintendents, &c. &c.; purchasing boats, wagons, and carts, for the transportation of materials. In a word, the numberless expenses incurred with a view to the *completion* of a fortress estimated to cost \$600,000. It is to this source that they looked for the means of reimbursing the heavy losses sustained in the early stages of the work, arising from the numerous disadvantages under which they then labored, most of which, if you please, arose "from the blunderings of men who had undertaken what they were incapable of performing." They had, indeed, committed numerous blunders. The first and greatest was that mentioned by Colonel Gadsden, and above alluded to. The next, a consequence of the former, was employing free labor, hired by the day, and procured from the Eastern cities. These blunders were detected and corrected. In place of themselves, they substituted Colonel Starke as conductor of the work. In place of men "who were incapable of performing" what they had undertaken, they substituted a man every way qualified to conduct it in an efficient and economical manner. In place of laborers hired by the day, and transported at an enormous expense from the Eastern cities, and procured with difficulty, they substituted slaves owned by themselves; a change which, according to all the testimony, promised, nay *ensured*, a prosperous termination to their undertaking. They have been subjected to all the losses arising from the causes above alluded to, and they have been prevented by the Government from reaping the benefit which would have been the result of their change of plan. They have paid the price, but have been deprived of the fruits of dearbought experience. Having fixed the rule by which

we are to be guided in ascertaining the amount of compensation to which the contractors are fairly entitled, it is easy, as it seems to the claimants, to apply that rule to their case. The quantity of work which remained to be done is known; the price to have been paid for it is also known. From the sum thus given, we have only to take that which it would have cost the contractors, *with the means at their disposal*, to complete it. They had already incurred all the expense of preparation, the extent and cost of which it is unnecessary here to repeat. They had procured slave labor to a large amount, and had the means, through the credit and capital of their adjunct, Colonel Starke, of acquiring any additional quantity which might be required. Now let any reasonable estimate be made of the cost of completing the work under these circumstances, and the claimants will be satisfied with the result. Let any man acquainted with the subject, let any experienced engineer, be put in possession of the facts here stated, (which are undeniable,) and say what it would have cost the contractors to complete the work which remained to be done when they were dismissed by the Government; and if he shall produce a result unfavorable to the claimants, neither the commissioners nor Congress will be again troubled with their complaints.

The claimants refer with great confidence to the evidence of Captain Delafield, recently taken under the direction of the commissioners. They are perfectly content that his estimate of the cost of slave labor, taken in connexion with the actual condition of the contractors when they were dismissed from the work, shall be assumed by the commissioners as their guide.

In conclusion, I have only to say that the claimants have no further evidence to offer; and they earnestly request that the commissioners will report to Congress at as early a day as may suit their convenience.

Very respectfully, yours,

JOHN SCOTT.

PETER HAGNER, Esq., *Third Auditor.*

